

No. 12812

United States
Court of Appeals
For the Ninth Circuit.

JOSEPH C. PATTERSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the District Court
for the Territory of Alaska,
Division Number One.

FILED

APR - 5 1951

PAUL J. QUINN

No. 12812

United States
Court of Appeals
For the Ninth Circuit.

JOSEPH C. PATTERSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the District Court
for the Territory of Alaska,
Division Number One.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Appeal Bond.....	41
Attorneys of Record.....	1
Clerk's Certificate.....	347
Cost Bond on Appeal.....	43
Court's Instructions to the Jury.....	8
Court's Second Supplemental Instructions to the Jury.....	27
Court's Supplemental Instructions to the Jury.	24
Defendant's Proposed Instruction No. 1.....	6
Defendant's Proposed Instruction No. 2.....	7
Defendant's Proposed Instruction No. 3.....	8
Designating Entire Record to Be Printed and Statement of Points.....	51
Indictment	3
Judgment and Commitment.....	31
Minute Order Entered November 3, 1950.....	39
Motion for New Trial.....	33
Motion for Order and Order Extending Time for Filing Transcript of Record and Docket- ing Cause in Appellate Court.....	46

INDEX	PAGE
Motion for Supplemental Order, and Supplemental Order Extending Time for Filing Transcript of Record and Docketing Cause in Appellate Court.....	48
Notice of Appeal.....	40
Praecipe	47
Reporter's Transcript of Record.....	57
Supplemental Praecipe.....	50
Verdict No. 1.....	30
Verdict No. 2.....	31
Witnesses, Defendant's:	
Klingbeil, Chester O.	
—direct	278
—cross	282
—redirect	288
Lindsey, Roland D.	
—direct	288
—cross	293
—redirect	299
—recross	300
Maltsberger, Walter C.	
—direct	309
—cross	314
—redirect	321

INDEX

PAGE

Witnesses, Defendant's—(Continued):

Patterson, Joseph C.	..
—direct	206, 227
—cross	241
—redirect	256
Russell, George	
—direct	301
—cross	304
—redirect	307, 308
—recross	307
Tatsuda, Jimmy K.	
—direct	272
—cross	273
—redirect	274, 277
—recross	274
Tatsuda, William N.	
—direct	259
—cross	266
—redirect	269, 270
—recross	270
Van Gilder, John F.	
—direct	321
—cross	323
—redirect	334
—recross	335

	INDEX	PAGE
Witnesses, Government's:		
Cottrill, Eugene Wayne		
—direct		165
—cross		171
Graham, Charles Edward		
—direct		172
—cross		178
Halstead, Robert O.		
—direct		183
—cross		187
Lamb, John Roger		
—direct		59
—cross		92, 219
—redirect		130, 225, 226
—recross		225
Lamb, Julia Ellen		
—direct		203
Sampson, Kenneth P.		
—direct		204
Warner, Richard E.		
—direct		131
—cross		146
—redirect		158
—recross		160
Wendler, John D.		
—direct		189
—cross		193
—redirect		201

ATTORNEYS OF RECORD

ZIEGLER, KING & ZIEGLER,

Box 1079,

Ketchikan, Alaska.

CUDDY & KAY,

Anchorage, Alaska,

For Appellant.

P. J. GILMORE, JR.,

United States Attorney, First Division,

For Appellee.

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan

No. 1549-KB

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH C. PATTERSON,

Defendant.

INDICTMENT

Vio. Sec. 201, Title 18, U.S.C. (Bribery)

Count I.

The Grand Jury Charges:

That on or about the 19th day of August, 1950, in Division Number One, Territory of Alaska, Joseph C. Patterson did knowingly, wilfully, unlawfully and feloniously offer and give John Roger Lamb the sum of One Hundred Eighty (\$180.00) Dollars in lawful money of the United States, said John Roger Lamb being a person acting for and on behalf of the United States in an official function, under and by authority of the Fish and Wildlife Service, United States Department of the Interior, whose duties were to observe the area of Mink Arm, Boca de Quadra, Alaska, then and there closed to commercial fishing for salmon, to report and disclose to officials of said Fish and Wildlife Service and other law enforcement officials and to arrest and cause the arrest and prosecution of, all persons

fishing illegally for salmon in said closed area; knowing said John Roger Lamb was a person acting for and on behalf of the United States in an official function with duties as aforesaid, and with the intention on the part of said Joseph C. Patterson to influence and induce John Roger Lamb to do an act in violation of his lawful duties; that is to say, to unlawfully refrain from and omit to report and disclose to officials of the Fish and Wildlife Service and other law enforcement officials, that said Joseph C. Patterson did fish illegally in said area closed to commercial fishing for salmon, and to refrain from arresting or causing the arrest and prosecution of said Joseph C. Patterson for illegally fishing in said area. [10*]

Count II.

The Grand Jury Further Charges:

That on or about the 21st day of August, 1950, in Division Number One, Territory of Alaska, Joseph C. Patterson did knowingly, wilfully, unlawfully and feloniously offer and give John Roger Lamb the sum of One Hundred (\$100.00) Dollars in lawful money of the United States; said John Roger Lamb being a person acting for and on behalf of the United States in an official function, under and by authority of the Fish and Wildlife Service, United States Department of the Interior, whose duties were to observe the area of Mink Arm, Boca de Quadra, Alaska, then and there

*Page numbering appearing at foot of page of original Certified Transcript of Record.

closed to commercial fishing for salmon, to report and disclose to officials of said Fish and Wildlife Service and other law enforcement officials and to arrest and cause the arrest and prosecution of, all persons fishing illegally for salmon in said closed area; knowing the said John Roger Lamb was a person acting for and on behalf of the United States in an official function with duties as aforesaid, and with the intention on the part of said Joseph C. Patterson to influence and induce John Roger Lamb to do an act in violation of his lawful duties, that is to say, to unlawfully refrain from and omit to report and disclose to officials of the Fish and Wildlife Service and other law enforcement officials, that said Joseph C. Patterson did fish illegally in said area closed to commercial fishing for salmon, and to refrain from arresting or causing the arrest and prosecution of said Joseph C. Patterson for illegally fishing in said area.

A True Bill.

/s/ CHAS. MARTIN CARLSON,
Foreman.

/s/ ERNEST E. BAILEY,
Asst. U. S. Attorney.

Witnesses:

JOHN ROGER LAMB,
RICHARD WARNER,
JOHN WENDLER.

Bail \$5,000.00.

[Endorsed]: Filed September 29, 1950. [11]

[Title of District Court and Cause.]

DEFENDANT'S PROPOSED
INSTRUCTION No. 1

It is well settled that decoys may be used to entrap criminals, and to present opportunity to one intending or willing to commit crime. But decoys are not permissible to ensnare the innocent and law-abiding into the commission of crime. When the criminal design originates, not with the accused, but is conceived in the mind of government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor.

If the jury are satisfied that prior to the commission of the acts alleged that the defendant never conceived any intention of committing these offenses or any similar offenses, but that the officers of the government incited and by suasion and representations lured him to commit the offenses alleged in order to entrap, arrest, and prosecute the defendant therefor, then these facts are fatal to the prosecution of these offenses, and the defendant is entitled to a verdict of not guilty.

Newman v. United States,
(CCA 4th, 1924) 299 Fed. 128.

Capuano v. United States,
(CCA 1st, 1925) 9 F(2d) 41.

Sorrells v. United States,
287 U. S. 435, 86 ALR 249.

Woo Wai v. United States,
(CCA 9th) 223 Fed. 412.

Refused because covered.

/s/ FOLTA. [25]

[Title of District Court and Cause.]

DEFENDANT'S PROPOSED
INSTRUCTION No. 2

As the Government has the burden of proof throughout this trial, if you have any reasonable doubt of the defendant's having been lured by entrapment, as I have heretofore defined that term, into the commission of the offenses charged, when theretofore he had no such intention, he is not guilty of any offense and should be acquitted.

Patton v. United States,
(CCA 8th) 42 F(2d) 68.

Refused because there is no evidence that defendant was "lured."

/s/ FOLTA. [26]

[Title of District Court and Cause.]

DEFENDANT'S PROPOSED
INSTRUCTION No. 3

In this case the evidence of character witnesses has been introduced with regard to the general reputation of the defendant for honesty and integrity in the community in which he lives. You are to consider this evidence together with the other evidence in the case. The evidence of such witnesses may, if believed by you, be sufficient to create a reasonable doubt as to the guilt of the defendant.

Refused because it singles out and emphasizes one fact.

/s/ FOLTA. [27]

[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY
No. 1

Ladies and Gentlemen of the Jury:

We have now reached the point in the trial of this case where it becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon the facts of this case.

When you were accepted as jurors in this case you obligated yourselves by your oaths to well and truly try the matter in issue between the Government of the United States and the defendant, and a

true verdict render according to the law and the evidence as given to you on the trial. That oath means that you will not be swayed by passion, sympathy or prejudice, and that your verdict will be the result of a careful consideration of all the evidence and the instructions of the Court as to the law.

It is not for you to say what the law is or should be regardless of any idea you may have in that respect. It is the exclusive province of the Court to declare the law in these instructions, and it is your duty as jurors to follow them in your deliberations and in arriving at a verdict.

On the other hand it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts. [29]

No. 2

The indictment charges, in Count I, that the defendant committed the crime of bribery by giving \$180 on August 19, 1950, and the same crime, in Count II, by giving \$100 on August 21, 1950, to John Roger Lamb, a person acting for and on behalf of the United States in an official function, under and by authority of the Department of the Interior, whose duties were to observe the waters of Mink Arm, Boca de Quadra, Alaska, then and

there closed to commercial fishing for salmon, to report and disclose violations and to arrest and cause the arrest and prosecution of all persons fishing illegally in said closed area, with the intent to influence and induce said Lamb to omit the performance of such duties and to refrain from arresting or causing the arrest and prosecution of the defendant for illegally fishing in said area. [30]

No. 3

Bribery, so far as pertinent to this case, is defined by law as follows:

“Whoever gives any money to any person acting for or on behalf of the United States or any department thereof, in any official function, under or by authority of any such department, with intent to influence or induce him to do or omit to do any act in violation of his lawful duty shall be fined or imprisoned,” [31] etc.

No. 4

The essential elements of the crime charged in Count I are:

(1) That on or about August 19, 1950, the defendant gave \$180 in lawful money of the United States, or some part thereof, to John Roger Lamb.

(2) That John Roger Lamb was then and there a person acting for or on behalf of the United States or the Department of the Interior, in an official function, under or by authority of such department.

(3) That the defendant knew that the said John Roger Lamb was then and there acting as such person.

(4) That the money was given with the intent to influence or induce the said John Roger Lamb to omit to report the defendant or to cause his arrest or prosecution for fishing in violation of the law.

The essential elements of the crime charged in Count II are identical except that the crime is alleged to have been committed on or about two days later.

Ordinarily each essential element of any crime charged must be proved beyond a reasonable doubt before there can be a conviction; but in this case the defendant has admitted all of the elements but contends that he was entrapped. You may therefore find that all the essential elements are proved beyond a reasonable doubt. [32]

No. 5

It is admitted that at all times material in this prosecution the waters of Mink Arm of Boca de Quadra, Alaska, were closed to commercial fishing for salmon and that the witness Lamb was a person acting in an official function for or on behalf of the United States or Department of the Interior and engaged in the performance of the duties set forth in the indictment. You are instructed that at all times material in this prosecution it was the function of the United States, acting through the Department of the Interior to conserve and protect

the commercial fisheries of Alaska for the benefit of all the citizens of the United States by adopting such means, by regulation or otherwise, as it deemed necessary; that among the means adopted was the closure of the waters of Mink Arm, Boca de Quadra, to commercial fishing for salmon and the appointment of John Roger Lamb with authority to prevent such commercial fishing by reporting or arresting or causing the arrest or prosecution of any person fishing or attempting to fish therein. [33]

No. 6

Therefore, if you find from the evidence including the defendant's admissions beyond a reasonable doubt that the defendant, on or about August 19, 1950, gave \$180 or any part thereof to John Roger Lamb, then and there a person acting for or on behalf of the United States or the Department of the Interior in any official function, knowing that he was acting in that capacity, with the intent to influence or induce the said Lamb to omit to report a violation of the fisheries law by the defendant, or to omit to arrest or cause the arrest or prosecution of the defendant for such illegal fishing, you should convict him of the offense charged in Count I of the indictment.

Likewise, if you find from the evidence including the admissions of defendant beyond a reasonable doubt that the defendant, on or about August 21, 1950, gave \$100 or some part thereof to John Roger Lamb, then and there a person acting for or on behalf of the United States or the Department

of the Interior in any official function, knowing that he was acting in that capacity, with the intent to influence or induce the said Lamb to omit to report a violation of the fisheries law by the defendant or to omit to arrest or cause the arrest or prosecution of the defendant for such illegal fishing, you should convict him of the offense charged in Count II of the indictment.

On the other hand, if you do not so find, or find that the defendant was entrapped or have a reasonable doubt arising from a consideration of all the evidence or lack thereof, you should acquit the defendant. [34]

No. 7

Since the defendant has admitted the acts constituting the offenses charged in the indictment and relies solely on the defense of entrapment, the question whether or not he was entrapped into committing these crimes or either of them is the only question for your consideration and determination.

The prosecution contends that the defendant was merely afforded an opportunity to commit the crimes charged and that he had the intent or the willingness to commit them.

You are instructed that the law does not allow one, for the purpose of obtaining a victim or for the sole purpose of prosecution to generate in the mind of another, who is innocent of any criminal purpose, the intent to commit a crime and thus induce him to commit a crime that he would not have committed or even contemplated but for such inducement. But while officers of the law may not thus

entrap an innocent person into the commission of a crime, they may, if they are informed or suspect that a person has the intent or disposition to commit a crime, not only afford him an opportunity to commit it but also may lay a trap for him by using a decoy or any artifice, strategem or other means and may actually solicit, encourage or cooperate with him in his commission of it. Such being the law, it is not for you to pass on the propriety of this means in apprehending criminals. Accordingly, if the evidence shows a mere proposal to violate the law upon which another acts, it is not sufficient to constitute entrapment. The proposal must have been accompanied by importunities, pleas or persuasion sufficient to overcome the will power and judgment of the other and induce, lure or entice him to commit a crime which he otherwise would not have committed. Whether in this case any such inducement, lure or enticement was made, given or held out by Lamb to the defendant is for you to say. Accordingly, if the defendant proposed bribery or accepted Lamb's proposal for personal gain or because Lamb was about to withdraw and make the offer to another, and not because the defendant was induced, lured or enticed to do so, the defense of entrapment would not be available to him and you should not consider such defense.

The defendant testified that he paid one bribe on August 17th, another on the 18th and the third on the 21st. If you find that the defendant was induced [35] to bribe, not for personal gain, but because his will power and judgment had been over-

come by the inducement offered and that after he had given the first bribe he subsequently gave two more, the defense of entrapment would not be available to him as to the second and third bribes unless you further find that he was still acting under the influence of the inducement, enticement and lure if any to commit the first bribery.

Therefore, if you find from the evidence that the defendant proposed a bribe to Lamb or had the intent or was willing for personal gain to commit the crimes charged, then you should find him guilty regardless of whether Lamb provided him with an opportunity and urged him to commit them or encouraged or cooperated with him in its commission.

On the other hand, if you find that the defendant did not propose bribery in the first instance and was not willing, and had no intent, to commit such crimes or either of them, and that the idea of its commission was implanted in his mind by Lamb and that he was induced, enticed or lured by Lamb to commit them or either of them where otherwise he would not have done so, or if you have a reasonable doubt thereof, arising upon a consideration of all the evidence or lack thereof, you should acquit him. [36]

No. 8

In any criminal case previous good character of the accused may be shown by evidence that his general reputation in the community in which he lives was good. General reputation consists of what the people of the community generally think or say of another and, hence, anyone who knows

what the general reputation of a person is in the community in which he lives may testify thereto. But the testimony must be based not on what a few people say but on what people generally say.

Evidence of good reputation is admitted not for the purpose of showing that the one accused did not commit the crime charged but for the purpose of showing the improbability that he would do so. It is for you to say whether the defendant's good general reputation in Ketchikan prior to the commission of the offenses charged has been proved. If you find that it has, you may consider it along with all the other testimony and give it such weight as you think it entitled to, remembering that persons of good character may nevertheless commit crimes. [37]

No. 9

The law presumes every person charged with crime to be innocent and, hence, the defendant is entitled to the benefit of this presumption until it has been overcome by evidence beyond a reasonable doubt. This rule as to the presumption of innocence is a humane provision of the law intended to guard against the conviction of innocent persons, but it is not intended to prevent the conviction of any person who is in fact guilty or to aid the guilty to escape punishment. Hence, it follows that the defendant does not have to prove his innocence, and that the burden of proving his guilt is upon the prosecution. [38]

No. 10

A reasonable doubt is not just any vague, fanciful or imaginary doubt, but one that arises after a careful consideration of all the evidence or from a lack thereof. It is a doubt based on reason, and not on a bare possibility of innocence, or on sympathy or a desire to escape from an unpleasant duty. Everything relating to human affairs and depending on human testimony is open to some possible doubt, and this is true of guilt.

If after carefully analyzing, comparing and weighing all the evidence, you have a settled conviction or belief of defendant's guilt, amounting to a moral certainty, such as you would be willing to act upon in matters of the highest importance relating to your own affairs, then you have no reasonable doubt. [39]

No. 11

Subject to the law as contained in these instructions, you are also the exclusive judges of the credibility of the witnesses and of the effect and value of the evidence. The term "witnesses" as used in this instruction includes the defendant.

You are, however, instructed that your power of judging the effect of evidence is not arbitrary but is to be exercised by you with legal discretion and in subordination to the rules of evidence. Evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict and, therefore, if weaker and less satisfactory evidence is offered when it appears

that stronger and more satisfactory evidence was within the power of the party offering it, such evidence should be viewed with distrust. Oral admissions of the defendant, if any, should be viewed with caution.

In determining the credibility of witnesses and the weight to be given their testimony, you should decide what testimony is to be believed in the same way as you would decide whether to believe something told you out of court. You size up the witness in court in the same way as an informant out of court, observe his appearance and demeanor, note his intelligence, whether he is candid and fair, whether he has an interest in the outcome of the trial, what motive he may have for testifying as he did, the opportunity he had to observe or learn or remember the facts to which he testified, the probability or improbability of his testimony, his bias or prejudice against or inclination to favor either party, his character as shown by the evidence, the extent to which he is corroborated or contradicted and all the other facts and circumstances which shed light on his credibility and the weight of his testimony. When a witness has a strong personal interest in the outcome of a case, the temptation to lie, or to color, distort or withhold the truth may likewise be strong. Notwithstanding that, however, you may find that he has told the truth. What has just been said concerning interest in the outcome of a case is likewise applicable to bias or prejudice against or a disposition to favor, either party. In other words, you should bring to bear upon your

consideration of the evidence or lack of evidence in this case all of the common knowledge of men and affairs which you, as reasonable [40] human beings, have and exercise in every day affairs of life. Accordingly, you should draw from the evidence in this case all deductions which appear to you to flow logically from such evidence.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on opposing sides, and that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence. The direct evidence of one witness whom you find to be entitled to full credit is sufficient for the proof of any fact in this case. A witness may be impeached by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity, or by contradictory evidence. A witness may also be impeached by evidence that at other times he has made statements inconsistent with his present testimony as to any matter material to this case; or by proof that he has been convicted of a crime. However, the impeachment of a witness

does not necessarily mean that his testimony is completely deprived of value or that its value is destroyed in any degree. The effect, if any of the impeachment upon the credibility of the witness is for you to determine. A witness wilfully false in one part of his testimony may be distrusted in other parts. Discrepancies in a witness' testimony or between his testimony and that of others, if there were any, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance. But a wilful falsehood always is a matter of importance and should be seriously considered. Whenever it is possible you will reconcile conflicting or inconsistent testimony, but where it is not possible to [41] do so, you should give credence to that testimony which, under all the facts and circumstances of the case, appeals to you as the most worthy of belief.

You are also instructed that the opening statements and the arguments of counsel are not evidence, and they are not binding upon you. You may, however, be guided by them if you find that they are based on the admitted evidence and appeal to your reason and judgment, and are not in conflict with the law as set forth in these instructions.

I also instruct you that you should not concern

yourselves with the matter of punishment. That is the exclusive concern of the Court. You are not responsible for the consequences of your verdict but only for its truth so far as the truth is determinable by you. [42]

No. 12

In considering your verdict you are instructed that any testimony which has been ordered stricken by the Court should not be considered by you for any purpose. [43]

No. 13

The law makes the defendant in a criminal action a competent witness but subjects his testimony to the same tests as that of any other witness. In determining his credibility, you have a right to take into consideration the fact that he is the defendant and that his interest in the result of your verdict is usually greater than that of any other witness, and give his testimony, considered in connection with all the other evidence, such weight as you believe it entitled to. [44]

No. 14

There is testimony in this case that the defendant has been previously convicted of other crimes. The Court instructs you that such evidence is not to be considered by you as evidence of the defendant's guilt of the crime for which he is now on trial, but is only to be considered by you in determining his credibility as a witness and the weight and value that you may give to his testimony. Like-

wise proof that any witness other than the defendant has been convicted of a crime or crimes, may be considered by you in determining the credibility of such witness and the weight and value of his testimony. [45]

No. 15

Jurors are impaneled for the purpose of agreeing upon a verdict, if they can conscientiously do so, so that there may be an end to litigation. In each case the verdict must be unanimous. But while the verdict should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conferences and discussion in the jury room. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors. The very object of the jury system is to secure unanimity by a comparison of the views of, and by discussion and argument among, the jurors themselves. Hence, while no juror should yield a sincere conviction founded upon the evidence and the law as laid down in these instructions merely to agree with the jury, every juror, in considering the case with fellow jurors, should lay aside all undue pride and vanity of personal opinion and listen, with a disposition to be convinced, to the opinions and arguments of the others and a desire to get at the truth in order that a just verdict, representing the collective judgment of the entire jury, may be reached.

Accordingly, no juror should hesitate to change the opinion he has entertained or expressed, if honestly convinced that such opinion is erroneous, even though in so doing he adopts the views and opinions of other jurors. But before a verdict of guilty can be rendered, each of you must be able to say, in answer to your individual conscience, that you have arrived at a settled conviction, based upon the law and the evidence of the case and nothing else, that the defendant is guilty. [46]

No. 16

Upon retiring to your jury room you will select one of your number foreman, who will speak for you and sign the verdict unanimously agreed upon.

You will take with you to the jury room the indictment, the exhibits and these instructions, together with two forms of verdict, each of which has a blank space before the word "guilty." If you find the defendant guilty, you should draw a line through the blank space. If you find him not guilty, you must write the word "not" in such blank space. Before reaching a verdict you will carefully consider and compare all the testimony.

If you agree upon a verdict during business hours, that is between 9:00 a.m. and 5:00 p.m., you should have your foreman date and sign it and then return it immediately into open court in the presence of the entire jury, together with the indictment, the exhibits and these instructions. If, however, you agree upon a verdict after business hours, that is, after 5:00 p.m. one day and before 9:00 a.m.

the following day, you should similarly have your foreman date and sign it and seal it in the envelope accompanying these instructions. The foreman will then keep it in his possession unopened and the jury may separate and go to their homes, but all of you must be in the jury box when the court next convenes at 10:00 a.m. when the verdict will be received from you in the usual way.

Given at Ketchikan, Alaska, this 25th day of October, 1950.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed October 26, 1950. [47]

[Title of District Court and Cause.]

COURT'S SUPPLEMENTAL INSTRUCTIONS
TO THE JURY

No. 1

Ladies and Gentlemen of the Jury:

Upon reading the note from the foreman, I discovered that I omitted to give you an instruction which is given in all cases and which is as follows:

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and you should not single out one particular instruction and consider it by itself, to the exclusion of all the other instructions.

As you have been heretofore instructed, your duty

is to determine the facts of the case from the evidence submitted, and to apply to these facts the law as given to you by the Court in these instructions. The Court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of evidence you have heard or the credibility of witnesses, because the responsibility for the determination of the facts in this case rests upon you and upon you alone.

No. 2

You will, therefore, observe that it would be improper for you to isolate one or two sentences and decide the case upon such sentences. As you have heretofore been instructed, there is but one question in this case and that is whether the defendant was entrapped in the legal sense. This makes the case a simple one and the jury should have no difficulty in reaching a verdict in a short time. To clarify and sum up the instruction already given you on this point, you are further instructed that the defense of entrapment is not available to the defendant if:

The idea of committing the crimes charged or either of them originated in the mind of the defendant or he made the first proposal to pay a bribe in return for permission to fish in a closed area. Likewise, the defense of entrapment would not be available to the defendant, even though the idea originated in the mind of Lamb and he made the first proposal to commit the crimes charged or either of

them, if notwithstanding, the defendant voluntarily chose to accept the proposal for personal gain. In other words, if you find such to be the case, it would not be unlike two criminally inclined persons who, after discussing the commission of crimes and the profit to be derived therefrom, decide to commit them.

On the other hand, the defense of entrapment is available to the defendant if the idea of committing these crimes or either of them originated in the mind of Lamb and the defendant had no intent to commit or even thought of committing such crimes and if, thereafter, the witness Lamb, by importunities, pleas, persuasion or argument, overcome the will power or judgment of the defendant and induced or enticed or lured the defendant into committing the crimes charged or either of them, primarily for the accommodation of Lamb.

Whether the defendant's mind and will were thus overcome or whether he acted solely from a desire for personal gain, is the crucial question upon which the case turns. If you find that it was the desire for personal gain that motivated the defendant, you should convict him, but if you find that his mind and will were overcome, or have a reasonable doubt thereof, you should acquit.

Given at Ketchikan, Alaska this 26th day of October, 1950.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed October 26, 1950.

[Title of District Court and Cause.]

COURT'S SECOND SUPPLEMENTAL
INSTRUCTIONS TO THE JURY

No. 1

Since the defendant has admitted the acts constituting the offenses charged in the indictment and relies solely on the defense of entrapment, the question whether or not he was entrapped into committing these crimes or either of them is the only question for your consideration and determination.

The prosecution contends that the defendant was merely afforded an opportunity to commit the crimes charged and that he had the intent or the willingness to commit them.

You are instructed that the law does not allow one, for the purpose of obtaining a victim or for the sole purpose of prosecution to generate in the mind of another, who is innocent of any criminal purpose, the intent to commit a crime and thus induce him to commit a crime that he would not have committed or even contemplated but for such inducement. But while officers of the law may not thus entrap an innocent person into the commission of a crime, they may, if they are informed or suspect that a person has the intent or disposition to commit a crime, not only afford him an opportunity to commit it but also may lay a trap for him by using a decoy or an artifice, stratagem or other means and may actually solicit, encourage or cooperate with him in his commission of it. Such being the law,

it is not for you to pass on the propriety of this means of apprehending criminals. Accordingly, if the evidence shows a mere proposal to violate the law upon which another acts, it is not sufficient to constitute entrapment. The proposal must have been accompanied by importunities, pleas or persuasion sufficient to overcome the will power and judgment of the other and induce, lure or entice him to commit a crime which he otherwise would not have committed. Whether in this case any such inducement, lure or enticement was made, given or held out by Lamb to the defendant is for you to say.

The defendant testified that he paid one bribe on August 17th, another on the 18th and the third on the 21st. If you find that the defendant was induced to bribe, not for personal gain, but because his will power and judgment had been overcome by the inducement offered and that after he had given the first bribe he subsequently gave two more, the defense of entrapment would not be available to him as to the second and third bribes unless you further find that he was still acting under the influence of the inducement, enticement and lure to commit the first bribery.

If you find from the evidence that the defendant offered a bribe to Lamb or had the intent to commit the crimes charged or either of them, or accepted Lamb's proposal, not because he was induced to accept it but from a desire for personal gain or from the fear of losing an opportunity for profit, then the defense of entrapment would not be available and you should find the defendant guilty re-

ardless of whether Lamb urged, encouraged or cooperated with him in the commission of the crimes involved.

On the other hand, if you find that the defendant did not offer a bribe to Lamb in the first instance and had no intent to commit the crimes charged or either of them and that the idea of the commission was implanted in his mind by Lamb and that by persuasion, representation or suggestion, Lamb overcame the will and better judgment of the defendant and induced, enticed or lured him into the commission of the crimes charged or either of them, or if you have a reasonable doubt thereof, you should acquit him.

The test is whether the defendant acted voluntarily and chose to commit the crimes charged, or either of them, from a desire for personal gain or from the fear of losing an opportunity to profit or whether his will power and better judgment were so overcome by Lamb, that he was induced to commit the crimes charged without having had any previous intention to do so. To illustrate, if "A," a custodian of government property, tells "B" that he will allow him to steal for a percentage of the profits from the sale thereof, then there would be no entrapment even though "A" told "B" that it was an excellent opportunity for making a lot of money. On the other hand, if "A" told "B" that he was in dire financial straits, that his family was on the verge of starvation and he was greatly in debt and begged him to steal goods from his custody and by such means induced "B" to steal for the accommodation of

“A,” which otherwise “B” would not even have contemplated, it would be entrapment.

This instruction supersedes original instruction No. 7 and Supplemental Instruction No. 2.

Given at Ketchikan, Alaska, this 26th day of October, 1950.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed October 26, 1950.

[Title of District Court and Cause.]

VERDICT No. I

We, the Jury empaneled and sworn in the above-entitled cause, find the defendant guilty of bribery as charged in Count I of the Indictment.

Dated at Ketchikan, Alaska this 26 day of October, 1950.

/s/ JOHN H. DOYLE,
Foreman.

[Endorsed]: Filed October 26, 1950.

[Title of District Court and Cause.]

VERDICT No. II

We, the Jury empaneled and sworn in the above-entitled cause, find the defendant guilty of bribery as charged in Count II of the Indictment.

Dated at Ketchikan, Alaska this 26 day of October, 1950.

/s/ JOHN H. DOYLE,
Foreman.

[Endorsed]: Filed October 26, 1950.

In the District Court for the Territory of Alaska
Division Number One, at Ketchikan
No. 1549-KB

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JOSEPH C. PATTERSON,
Defendant.

JUDGMENT AND COMMITMENT

Now, to wit, on this 30th day of October, 1950, this matter came before the Court for the imposition of sentence on the above-named defendant, Joseph C. Patterson, upon the verdict of the Jury whereby he was found guilty on October 26, 1950, of the crime of Bribery, in violation of Section 201, Title 18,

United States Code, as charged in Counts One and Two of the Indictment heretofore on the 29th day of September, 1950, returned by the Grand Jury and filed herein; the defendant being present and represented by his counsel, Wendell Kay; Ernest E. Bailey, Assistant United States Attorney, appearing for and on behalf of the United States; the defendant being asked if he had any good and sufficient reason to state why sentence should not now be imposed upon him, to which he offered none, and the Court being fully advised in the premises,

Hereby Orders, Adjudges and Decrees that it is the Judgment of the Court that said defendant, Joseph C. Patterson is guilty of the crime of Bribery, in violation of Section 201, Title 18, United States Code, as charged in Counts One and Two of the Indictment, and it is the sentence of the Court that the defendant be imprisoned in the Federal Penitentiary at McNeil Island, Washington or in such other institution as the Attorney General of the United States may direct for a period of Two (2) Years on Count One, and that the defendant be imprisoned for a period of Two (2) Years on Count Two, said sentences to run concurrently; and furthermore, the defendant pay a fine of Three Hundred (\$300.00) Dollars on each count; and that the defendant, Joseph C. Patterson stand committed until the sentences herein imposed are fully executed, and

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment and Commitment to the United States Marshal or other

qualified officer, and that the same shall serve as a commitment herein.

Done in open court, this 30th day of October, 1950.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed November 1, 1950.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant, Joseph C. Patterson, and moves the Court to grant him a new trial, for the following reasons:

1. The Court erred in denying defendant's motion for acquittal at the conclusion of the Government's evidence and at the conclusion of all the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. Instruction No. 7, given by the Court as follows:

“* * * But while the officers of the law may not thus entrap an innocent person into the commission of a crime, they may, if they are informed or suspect that a person has the intent or disposition to commit a crime, not only afford him an opportunity to commit it but

also may lay a trap for him by using a decoy or any artifice, stratagem or other means and may actually solict, encourage or cooperate with him in his commission of it. Such being the law, it is not for you to pass on the propriety of this means in apprehending criminals. Accordingly, if the evidence shows a mere proposal to violate the law upon which another acts, it is not sufficient to constitute entrapment. The proposal must have been accompanied by importunities, pleas or persuasion sufficient to overcome the will power and judgment of the other and induce, lure or entice him to commit a crime which he otherwise would not have committed. Whether in this case any such inducement, lure or enticement was made, given or held out by Lamb to the defendant is for you to say. Accordingly, if the defendant proposed bribery or accepted Lamb's proposal for personal gain or because Lamb was about to withdraw and make the offer to another, and not because the defendant was induced, lured or enticed to do so, the defense of entrapment would not be available to him and you should not consider such defense.

* * *

“Therefore, if you find from the evidence that the defendant proposed a bribe to Lamb or had the intent or was willing to commit the crimes charged, then you should find him guilty regardless of whether Lamb provided him with

an opportunity and urged him to commit them or encourage or cooperated with him in its commission."

and especially the underlined portion thereof, was erroneous, for the reason that said instructions do not correctly state the law of entrapment.

5. Instruction No. 2 of the Court's supplemental instructions to the Jury, reading as follows:

"* * * As you have heretofore been instructed, there is but one question in this case and that is whether the defendant was entrapped in the legal sense. This makes the case a simple one and the jury should have no difficulty in reaching a verdict in a short time. To clarify and sum up the instruction already given you on this point, you are further instructed that the defense of entrapment is not available to the defendant if:

"(1) The idea of committing the crimes charged or either of them originated in the mind of the defendant or he made the first proposal to pay a bribe in return for permission to fish in a closed area. Likewise, the defense of entrapment would not be available to the defendant, even though the idea originated in the mind of Lamb and he made the first proposal to commit the crimes charged or either of them, if notwithstanding, the defendant voluntarily chose to accept the proposal for personal gain. In other words, if you find such to be the case, it would not be unlike two crimi-

nally inclined persons, who, after discussing the commission of crimes and the profit to be derived therefrom, decide to commit them.

“On the other hand, the defense of entrapment is available to the defendant if the idea of committing these crimes or either of them originated in the mind of Lamb and the defendant had no intent to commit or even thought of committing, such crimes, and if, thereafter, the witness Lamb, by importunities, pleas, persuasion or argument, overcame the will power or judgment of the defendant and induced or enticed or lured the defendant into committing the crimes charged or either of them, primarily for the accommodation of Lamb.

“Whether the defendant’s mind and will were thus overcome or whether he acted solely from a desire for personal gain, is the crucial question upon which the case turns. If you find that it was the desire for personal gain that motivated the defendant, you should convict him, but if you find that his mind and will were overcome, or have a reasonable doubt thereof, you should acquit.”

and especially the underlined portion thereof, was erroneous for the reason that said instruction does not state correctly the law of entrapment.

6. Instruction No. 1 of the Court’s second supplemental instruction to the Jury, reading as follows:

“* * * The proposal must have been accompanied by importunities, pleas or persuasion sufficient to overcome the will power and judgment of the other and induce, lure or entice him to commit a crime which he otherwise would not have committed. Whether in this case any other inducement, lure or enticement was made, given or held out by Lamb to the defendant is for you to say.

“The defendant testified that he paid one bribe on August 17th, another on the 18th and the third on the 21st. If you find that the defendant was induced to bribe, not for personal gain, but because his will power and judgment had been overcome by the inducement offered and that after he had given the first bribe he subsequently gave two more, the defense of entrapment would not be available to him as to the second and third bribes unless you further find that he was still acting under the influence of the inducement, enticement and lure to commit the first bribery.

“If you find from the evidence that the defendant offered a bribe to Lamb or had the intent to commit the crimes charged or either of them, accepted Lamb’s proposal, not because he was induced to accept it but from a desire for personal gain or from the fear of losing an opportunity for profit, then the defense of entrapment would not be available and you should find the defendant guilty regardless of whether

Lamb urged, encouraged or cooperated with him in the commission of the crimes involved.

* * *

“The test is whether the defendant acted voluntarily and chose to commit the crimes charged, or either of them, from a desire for personal gain or from the fear of losing an opportunity to profit or whether his will power and better judgment were so overcome by Lamb that he was induced to commit the crimes charged without having had any previous intention to do so. To illustrate, if “A,” a custodian of government property tell “B” that he will allow him to steal for a percentage of the profits from the sale thereof, then there would be no entrapment even though “A” told “B” that it was an excellent opportunity for making a lot of money. On the other hand, if “A” told “B” that he was in dire financial straits, that his family was on the verge of starvation and he was greatly in debt and begged him to steal goods from his custody and by such means induced “B” to steal for the accommodation of “A,” which otherwise “B” would not even have contemplated, it would be entrapment.”

and especially the underlined portion thereof, was erroneous for the reason that said quoted instructions do not correctly state the law of entrapment, and that the same were highly prejudicial to the defendant.

7. Other manifest error appearing of record, to

which objection was taken and exception reserved.

Dated at Ketchikan, Alaska, this 30th day of October, 1950.

CUDDY & KAY,
ZIEGLER, KING & ZIEGLER,
Attorneys for Defendant.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 30, 1950.

MINUTE ORDER

10:00 A.M.—Friday, November 3, 1950

[Title of Cause.]

This matter came before the court for hearing on defendant's motion for a new trial and a supplemental motion for a new trial. The court directed that the supplemental motion for a new trial and the affidavits attached thereto be stricken from the file. Robert H. Ziegler briefly argued the Motion for a New Trial, which the court denied and defendant thereupon filed his notice of appeal.

The above excerpt taken from page 26, Volume 13 of Ketchikan Civil & Criminal Journal.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Joseph C. Patterson, Box 945, Ketchikan, Alaska.

Names and addresses of appellant's attorneys: Cuddy & Kay, Anchorage, Alaska. Ziegler, King & Ziegler, Box 1079, Ketchikan, Alaska.

Offense: Bribery.

Concise statement of judgment or order, giving date, and any sentence: Judgment entered as of October 30, 1950, finding the appellant guilty of the offense of bribery, in violation of Section 201, Title 18, United States Code, as charged in the indictment, and sentencing him to serve two years' imprisonment in McNeil Island Penitentiary in the State of Washington, or such other penal institution as the Attorney General of the United States may direct, on each of two counts, to run concurrently, and to pay a fine of Three Hundred (\$300) Dollars on each count. Appellant admitted to bail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above judgment.

Dated at Ketchikan, Alaska, November 3, 1950.

CUDDY & KAY,
ZIEGLER, KING & ZIEGLER,
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 3, 1950.

[Title of District Court and Cause.]

APPEAL BOND

A judgment having been given on the 30th day of October, 1950, in the above-entitled court and cause, whereby Joseph C. Patterson, the above-named defendant, was sentenced to serve in the United States Penitentiary at McNeil Island, Washington, or in such other institution as the Attorney General of the United States may direct, for a period of two (2) years, on two counts, to run concurrently, and was fined Three Hundred (\$300) Dollars on each of two counts of bribery; and he having appealed from said judgment and been duly admitted to bail in the sum of Seven Thousand, Five Hundred (\$7,500) Dollars,

We, J. C. Strand, of Ketchikan, Alaska, by occupation fisherman, and H. F. Schaub, of Ketchikan, Alaska, by occupation a manufacturer of concrete products, hereby undertake that the above-named Joseph C. Patterson shall in all respects abide and perform the orders and judgments of the appellate court upon the appeal; or if he fail to do so in any particular, that we will severally pay to the United States of America the sum of Seven Thousand, Five Hundred (\$7,500) Dollars in lawful money of the United States.

Dated at Ketchikan, Alaska, this 30th day of October, 1950.

/s/ J. C. STRAND,

/s/ H. F. SCHAUB.

Signed and acknowledged before me this 30th day of October, 1950.

[Seal] /s/ P. J. GILMORE,
United States Commissioner for the Precinct of
Ketchikan, Alaska.

United States of America,
Territory of Alaska—ss.

J. C. Strand, being first duly sworn, on oath deposes and says:

I am a resident and inhabitant of the Precinct of Ketchikan, First Division, Territory of Alaska, and am not an attorney, marshal, deputy marshal, clerk of court or other officer of any court. I am worth the sum of \$7,500 over and above all my just debts and liabilities, exclusive of property exempt from execution.

/s/ J. C. STRAND.

Subscribed and sworn to before me this 30th day of October, 1950.

[Seal] /s/ P. J. GILMORE,
United States Commissioner for the Precinct of
Ketchikan, Alaska.

United States of America,
Territory of Alaska—ss.

H. F. Schaub, being first duly sworn, on oath deposes and says:

I am a resident and inhabitant of the Precinct of Ketchikan, First Division, Territory of Alaska, and

am not an attorney, marshal, deputy marshal, clerk of court or other officer of any court. I am worth the sum of \$7,500 over and above all my just debts and liabilities, exclusive of property exempt from execution.

/s/ H. F. SCHAUB.

Subscribed and sworn to before me this 30th day of October, 1950.

[Seal] /s/ P. J. GILMORE,
United States Commissioner for the Precinct of
Ketchikan, Alaska

[Endorsed]: Filed Oct. 30, 1950.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know all men by these presents That we, Joseph C. Patterson, the above-named defendant, as principal, and William Tatsuda, of Ketchikan, Alaska, a merchant, as surety, are held and firmly bound unto the United States of America in the sum of Two Hundred Fifty (\$250) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made we, and each of us, bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed, sealed and dated at Ketchikan, Alaska, this 21st day of November, 1950.

The condition of the above obligation is such that whereas the above-named defendant and principal was, on the 30th day of October, 1950, sentenced in the above-entitled court and cause to serve in the United States Penitentiary at McNeil Island, Washington, or in such other institution as the Attorney General of the United States may direct, for a period of two years on each of two counts of bribery, to run concurrently, and fined Three Hundred (\$300) Dollars on each of two counts; and he having appealed from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco:

Now, Therefore, If the said Joseph C. Patterson shall prosecute his said appeal to effect and shall pay all costs that may be adjudged against him if he fail to make good his appeal, then this obligation to become null and void; otherwise to be and remain in full force and effect.

/s/ JOSEPH C. PATTERSON,
Principal.

/s/ WILLIAM TATSUDA,
Surety.

Taken and acknowledged before me this 21st day of November, 1950.

[Seal] /s/ P. J. GILMORE,
United States Commissioner for the Precinct of
Ketchikan, Alaska.

United States of America,
Territory of Alaska—ss.

William Tatsuda, whose name is subscribed to the foregoing bond as a surety, being first duly sworn, on oath deposes and says:

That he is a resident of the Territory of Alaska and over the age of twenty-one years. That he is not an attorney or counselor at law, clerk, marshal or other officer of any court. That he is worth the sum of Five Hundred (\$500) Dollars in lawful money of the United States of America, over and above all his just debts and obligations, and exclusive of property exempt from execution.

/s/ WILLIAM TATSUDA.

Subscribed and sworn to before me this 21st day of November, 1950.

[Seal] /s/ P. J. GILMORE,
United States Commissioner for the Precinct of
Ketchikan, Alaska.

[Endorsed]: Filed Nov. 22, 1950.

[Title of District Court and Cause.]

MOTION FOR ORDER AND ORDER EXTENDING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CAUSE IN APPELLATE COURT

Comes now the above-named defendant, and moves the Court for an order extending the time for filing the transcript of record and docketing the within cause in the appellate court for the period of 30 days for the reason that the court reporter is unable to prepare a transcript of the evidence within the forty days provided by law for filing the transcript of record and docketing the cause on appeal.

This motion is based upon the record and files herein, and upon the statements of the said court reporter available in support of this motion.

Dated: Anchorage, Alaska, Dec. 8, 1950.

/s/ WENDELL P. KAY,

Attorneys for Defendant.

Order

On reading and filing the above motion, It Is Ordered that the time for filing the transcript of record and docketing the within cause on appeal in the appellate court be, and it is hereby extended for the period of 30 days.

Done in open court, at Anchorage, Alaska, the
8 day of Dec. 1950.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed Dec. 8, 1950.

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the Above-Entitled Court, at Ketchikan, Alaska:

Please prepare and transmit to the United States Court of Appeals for the Ninth Circuit, to be filed and docketed in said appellate court, within the time provided by law, for use on appeal in the above-entitled action, the following transcript of record on appeal:

1. Indictment.
2. Verdict.
3. Judgment and commitment.
4. Motion for new trial.
5. Order denying motion for new trial.
6. Notice of appeal.
7. Reporter's original transcript of the trial, properly certified, including all evidence, exhibit Plf's No. 1 and instructions, the proposed instructions for the defendant and rulings thereon, and ob-

jections to instructions; but not including opening statements of counsel, examination of jurors, or arguments of counsel.

8. Motion and order extending time for filing transcript of record and docketing cause in appellate court, entered December 8, 1950.

9. This praecipe.

Dated: Ketchikan, Alaska, December 26, 1950.

CUDDY & KAY,

ZIEGLER, KING & ZIEGLER,
Attorneys for Appellant.

[Endorsed]: Filed December 28, 1950.

[Title of District Court and Cause.]

MOTION FOR SUPPLEMENTAL ORDER,
AND SUPPLEMENTAL ORDER EXTEND-
ING TIME FOR FILING TRANSCRIPT
OF RECORD AND DOCKETING CAUSE
IN APPELLATE COURT

Comes now the above-named defendant, and moves the Court for a supplemental order extending the time for filing the transcript of record and docketing the within cause in the appellate court, for the period of an additional fifteen (15) days from January 7, 1951, on which day the first thirty (30) days' extension heretofore obtained expired, for the reason that the Court Reporter is, as of this date, un-

able to prepare a transcript of the evidence within the time granted by the thirty-day extension for filing the transcript of record and docketing the cause on appeal.

This motion is based upon the record and files herein, and upon the statements of the said court reporter available in support of this motion.

Dated: Ketchikan, Alaska, January 3, 1951.

CUDDY & KAY,

ZIEGLER, KING & ZIEGLER,
Attorneys for Defendant.

SUPPLEMENTAL ORDER

On reading and filing the above supplemental motion, It Is Ordered That the time for filing the transcript of record and docketing the within cause on appeal in the appellate court be, and it is hereby, extended for the period of fifteen (15) days from January 7, 1951.

Done in open court, at Juneau, Alaska, the 4th day of January, 1951.

/s/ GEORGE W. FOLTA,
District Judge.

Copy received 1/2/51.

[Endorsed]: Filed Jan. 4, 1951.

[Title of District Court and Cause.]

SUPPLEMENTAL PRAECIPE

To the Clerk of the Above-Entitled Court, at Ketchikan, Alaska:

Please prepare and transmit to the United States Court of Appeals for the Ninth Circuit, to be filed and docketed in said appellate court, within the time provided by law, for use on appeal in the above-entitled action, the following additions to the transcript of record on appeal:

10. Supplemental motion and supplemental order extending time for filing transcript of record and docketing cause in appellate court, entered January 4, 1951.

11. This supplemental praecipe.

Dated: Ketchikan, Alaska, January 16, 1951.

CUDDY & KING,

ZIEGLER, KING & ZIEGLER,
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed January 16, 1951.

[Title of District Court and Cause.]

DESIGNATING ENTIRE RECORD TO BE
PRINTED, AND STATEMENT OF POINTS

Comes now the above-named appellant, Joseph C. Patterson, and respectfully designates the entire record on appeal to be printed for consideration on appeal; and submits the following statement of points on which he intends to rely on his appeal:

1. The Court erred in denying defendant's motion for a judgment of acquittal, made at the close of the evidence offered by the Government.

2. The Court erred in denying defendant's motion for a judgment of acquittal, made at the close of all the evidence.

3. The following portion of Instruction No. 7 given by the Court was erroneous in that it fails to state correctly the law of entrapment, especially as regards monetary motivations of the defendant:

“* * * But while the officers of the law may not thus entrap an innocent person into the commission of a crime, they may, if they are informed or suspect that a person has the intent or disposition to commit a crime, not only afford him an opportunity to commit it but also may lay a trap for him by using a decoy or any artifice, stratagem or other means and may actually solicit, encourage or cooperate with him in his commission of it. Such being the law, it is not for you to pass on the propriety of this means in apprehending crim-

inals. Accordingly, if the evidence shows a mere proposal to violate the law upon which another acts, it is not sufficient to constitute entrapment. The proposal must have been accompanied by importunities, pleas or persuasion sufficient to overcome the will power and judgment of the other and induce, lure or entice him to commit a crime which he otherwise would not have committed. Whether in this case any such inducement, lure or enticement was made, given or held out by Lamb to the defendant is for you to say. Accordingly, if the defendant proposed bribery or accepted Lamb's proposal for personal gain or because Lamb was about to withdraw and make the offer to another, and not because the defendant was induced, lured or enticed to do so, the defense of entrapment would not be available to him and you should not consider such defense.

* * *

“Therefore, if you find from the evidence that the defendant proposed a bribe to Lamb or had the intent or was willing to commit the crimes charged, then you should find him guilty regardless of whether Lamb provided him with an opportunity and urged him to commit them or encouraged or cooperated with him in its commission.”

4. The following portion of Instruction No. 2 of the Court's supplemental instructions was errone-

eous in that it holds, in effect, that if the defendant committed the offense with which he was charged, for personal gain rather than because his will power was overcome by persuasion, then the defense of entrapment was not available:

“* * * As you have heretofore been instructed, there is but one question in this case and that is whether the defendant was entrapped in the legal sense. This makes the case a simple one and the jury should have no difficulty in reaching a verdict in a short time. To clarify and sum up the instruction already given you on this point, you are further instructed that the defense of entrapment is not available to the defendant if:

“(1) The idea of committing the crimes charged or either of them originated in the mind of the defendant or he made the first proposal to pay a bribe in return for permission to fish in a closed area. Likewise, the defense of entrapment would not be available to the defendant, even though the idea originated in the mind of Lamb and he made the first proposal to commit the crimes charged or either of them, if notwithstanding, the defendant voluntarily chose to accept the proposal for personal gain. In other words, if you find such to be the case, it would not be unlike two criminally inclined persons, who, after discussing the commission of crimes and the profit to be derived therefrom, decide to commit them.

“On the other hand, the defense of entrap-

ment is available to the defendant if the idea of committing these crimes or either of them originated in the mind of Lamb and the defendant had no intent to commit or even thought of committing, such crimes, and if, thereafter, the witness Lamb, by importunities, pleas, persuasion or argument, overcame the will power or judgment of the defendant and induced or enticed or lured the defendant into committing the crimes charged or either of them, primarily for the accommodation of Lamb.

“Whether the defendant’s mind and will were thus overcome or whether he acted solely from a desire for personal gain, is the crucial question upon which the case turns. If you find that it was the desire for personal gain that motivated the defendant, you should convict him, but if you find that his mind and will were overcome, or have a reasonable doubt thereof, you should acquit.”

5. The following portion of Instruction No. 1 of the Court’s second supplemental instruction was prejudicial and erroneous in that it likewise holds in effect that if the defendant were motivated by a desire for personal gain, such motivation constituted insufficiency of inducement, so as to make unavailable to the defendant the defense of entrapment:

“* * * The proposal must have been accompanied by importunities, pleas or persuasion sufficient to overcome the will power and

judgment of the other and induce, lure or entice him to commit a crime which he otherwise would not have committed. Whether in this case any such inducement, lure or enticement was made, given or held out by Lamb to the defendant is for you to say.

“The defendant testified that he paid one bribe on August 17th, another on the 18th and the third on the 21st. If you find that the defendant was induced to bribe, not for personal gain, but because his will power and judgment had been overcome by the inducement offered and that after he had given the first bribe he subsequently gave two more, the defense of entrapment would not be available to him as to the second and third bribes unless you further find that he was still acting under the influence of the inducement, enticement and lure to commit the first bribery.

“If you find from the evidence that the defendant offered a bribe to Lamb or had the intent to commit the crimes charged or either of them, accepted Lamb’s proposal, not because he was induced to accept it but from a desire for personal gain or from the fear of losing an opportunity for profit, then the defense of entrapment would not be available and you should find the defendant guilty regardless of whether Lamb urged, encouraged or cooperated with him in the commission of the crimes involved.

“The test is whether the defendant acted voluntarily and chose to commit the crimes charged, or either of them, from a desire for personal gain or from the fear of losing an opportunity to profit or whether his will power and better judgment were so overcome by Lamb that he was induced to commit the crimes charged without having had any previous intention to do so. To illustrate, if “A,” a custodian of government property tell “B” that he will allow him to steal for a percentage of the profits from the sale thereof, then there would be no entrapment even though “A” told “B” that it was an excellent opportunity for making a lot of money. On the other hand, if “A” told “B” that he was in dire financial straits, that his family was on the verge of starvation and he was greatly in debt and begged him to steal goods from his custody and by such means induced “B” to steal for the accommodation of “A,” which otherwise “B” would not even have contemplated, it would be entrapment.”

6. The Court erred in refusing to give Defendant’s Proposed Instruction No. 1.

7. The verdict is contrary to the weight of the evidence.

8. The verdict is not supported by substantial evidence.

9. The Court erred in denying the defendant’s motion for a new trial.

10. Other manifest error appearing of record, to which objection was taken and exception reserved.

Dated at Ketchikan, Alaska, this 16th day of January, 1951.

CUDDY & KAY,

ZIEGLER, KING & ZIEGLER,
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed January 16, 1951.

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan
No. 1549-KB

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH C. PATTERSON,

Defendant.

REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered, that on the 19th day of October, 1950, at 10:00 o'clock a.m., at Ketchikan, Alaska, the above-entitled cause came on for trial before a jury, the Honorable George W. Folta, United States District Judge, presiding; the Government appearing by Stanley D. Baskin and

Ernest E. Bailey, Assistant United States Attorneys; the defendant appearing in person and by Wendell Kay, A. H. Ziegler and Robert H. Ziegler, his attorneys;

Thereupon, respective counsel having announced that they were ready to proceed, empanelling of a jury was commenced, and the jury as constituted, having been duly admonished by the Court before subsequent recesses, was duly sworn to try the cause on the 19th day of October, 1950, at 3:30 o'clock p.m.; respective counsel having stipulated that they would proceed with eleven jurors in case of the absence, illness or disability of one;

Whereupon, the jury was duly admonished and excused until the 23rd day of October, 1950, at 10:00 o'clock a.m., at which time the trial was resumed with all parties present as heretofore, with the exception of A. H. Ziegler, and the jury all present in the box;

Thereupon, a motion by Mr. Baskin, which was consented to by Mr. Kay, for the exclusion of witnesses was allowed by the Court with each party to look out after its own witnesses; Mr. Baskin made the opening statement to the jury in behalf of the Government; Mr. Kay made the opening statement to the jury in behalf of the defendant;

Whereupon, the trial proceeded as follows:

Government's Case

JOHN ROGER LAMB

called as a witness on behalf of the Government,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your name? A. John Lamb.

Q. Where do you reside, John?

A. Ketchikan.

Q. How long have you lived here?

A. About six years.

Q. And by whom were you employed during the
summer 1950?

A. The Fish and Wildlife Service. [2*]

Q. Is that the United States Department of In-
terior? A. That is right.

Q. Is that a division of the United States Gov-
ernment? A. Yes.

Q. Or department of the United States Govern-
ment? A. It is.

Q. What day were you employed?

A. June 7th.

Q. 1950? A. That is right.

Q. And how long did you work for them, for the
Fish and Wildlife Service?

A. Prior, or this year?

Q. This year.

A. From June 7th till August 22nd.

Q. 1950. A. That is right.

* Page numbering appearing at foot of page of original Reporter's
Transcript of Record.

(Testimony of John Roger Lamb.)

Q. What was your title or your position with the Fish and Wildlife Service?

A. Deputy Enforcement Agent.

Mr. Kay: I am sorry, I can't hear you very well, Mr. Lamb.

A. Deputy Enforcement Agent.

Q. Speak a little louder.

The Court: I am wondering, in view of the opening [3] statements of the counsel, if they may not agree or stipulate to certain of these——

Mr. Kay: I will be glad to stipulate that Mr. Lamb is an official or employee of the United States Government serving in an official function during the period in question, and that he had been for two years prior thereto employed in the same or a similar capacity.

The Court: Is that satisfactory?

Mr. Baskin: Yes, your Honor.

The Court: The record will show that stipulation, and that will relieve you of the necessity of proving it.

Q. Mr. Lamb, as Deputy Enforcement Agent of the Fish and Wildlife Service, tell the jury what your duties were in connection with your employment.

A. Well, it was mainly to prevent illegal fishing in closed areas.

Q. And where were you directed to observe or prevent illegal fishing?

A. Anywhere within one mile of the heads.

Q. One mile of the heads of what?

(Testimony of John Roger Lamb.)

A. Boca de Quadra.

Q. You mentioned the heads. What are you speaking of? A. Mink Bay mainly.

Q. And well within one mile of Mink Bay, or one mile of the streams, of the mouth of the streams? [4]

A. Within one mile of the mouth of the streams, one statute mile.

Q. Of the streams that flow into Boca de Quadra? A. That is right.

Q. Well, were you in particular directed to prevent illegal fishing within one mile of the streams that flow into Mink Bay or Mink Arm of Boca de Quadra? A. Yes.

Mr. Baskin: If the Court please, I would like to ask the Court to take judicial notice of the area that was closed to commercial fishing in Boca de Quadra as reflected in the laws and regulations for the protection of commercial fisheries of Alaska, 1950, United States Department of Interior, Fish and Wildlife Service, as shown by Government publication, United States Printing Office, Washington, D. C.

The Court: What is the section number?

Mr. Baskin: It is section 124.9, entitled "Closed waters: all commercial fishing for salmon is prohibited as follows:" and then subsection f, "Boca de Quadra: indenting mainland; all waters within one statute mile of the mouth of any salmon stream tributary to Boca de Quadra."

(Testimony of John Roger Lamb.)

The Court: Judicial notice will be taken of the regulation quoted.

Mr. Baskin: Thank you. May it please the Court, I would like to have marked as Government's Exhibit for Identification, [5] to use as an exhibit, a drawing of the area of Boca de Quadra, Mink Arm, for the purpose of illustrating the area which was closed to commercial fishing.

The Court: You don't intend to introduce it as an exhibit with this witness?

Mr. Baskin: Yes, I do, your Honor.

The Court: Well, I don't think it is necessary to mark it for identification then.

Mr. Baskin: Well, I will introduce it as an exhibit by this witness, Exhibit No. 1.

The Court: Well, you mean you are offering it now, or you will offer it later?

Mr. Baskin: Well, I am offering it now.

Mr. Kay: It hasn't been identified yet.

Mr. Baskin: Very well.

The Court: Well, if it is a chart of the Coast and Geodetic Survey, it would be admissible without any further identification.

Mr. Baskin: That is right.

The Court: If you have any legends or writings on it, it will have to be authenticated before it is offered.

Mr. Bailey: Chart 8102.

The Court: Without any writing or legends?

Mr. Bailey: None other than what have been put on by the maker. [6]

(Testimony of John Roger Lamb.)

The Court: It may be admitted as Plaintiff's Exhibit No. 1.

Mr. Bailey: With the exception of the date which was stamped, I think the date of receipt.

Mr. Kay: No objection.

Mr. Baskin: We offer this chart, your Honor as Plaintiff's Exhibit No. 1 in Evidence.

The Court: It has already been admitted as Plaintiff's Exhibit No. 1.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 1.

Mr. Bailey: We would like to have the Court's permission to put it on the blackboard. Have you any objection?

Mr. Kay: No objection whatever.

(Whereupon, the chart was placed on the blackboard.)

Q. Now, Mr. Lamb, are you familiar or do you know the area of Mink Arm or Mink Bay that was closed to commercial fishing? A. I do.

Q. Would you come down here a moment and mark on the map? I show you on Government's Exhibit No. 1, U. S. Coast and Geodetic Survey mount No. 8102, an area marked as Mink Bay.

Are you familiar with that area? A. Yes.

Q. Are you familiar with the location of what is known as Humpback Creek? [7]

A. I am.

Q. Will you mark on this map, this exhibit, near Mink Bay what would be approximately one mile

(Testimony of John Roger Lamb.)

from the mouth of Humpback Creek in Mink Bay? Will you take the red pencil and draw a line across the bay? And let's mark this "A." Now you may take your seat. Thank you. Does Humpback Creek flow into Mink Bay? A. It does.

Q. And was the area within one statute mile of the mouth of Humpback Creek closed to commercial fishing? A. Yes.

Q. Mr. Lamb, in connection with your duties as preventing persons fishing illegally in the closed area, were you to report to Fish and Wildlife agents or officers of the law regarding any violations?

A. I was.

Q. Were you to arrest anyone? A. Yes.

Q. That is, who were you to arrest?

A. Any person violating the fishing laws, such as fishing inside the areas; the closed areas, that is.

Q. You mean fishing inside areas closed to commercial fishing? A. That is right.

Q. And you were to report such acts to the agents of the Fish and Wildlife Service? [8]

A. That is right.

Q. Now, calling your attention to the date of July 18, 1950, did you have an occasion to see Joe Patterson on that date? A. On July 18?

Q. On or about July 18, 1950? A. Yes.

Q. Are you acquainted with Joseph C. Patterson? A. Yes.

Q. Do you also know him as Joe Patterson?

A. That is right.

(Testimony of John Roger Lamb.)

Q. Is this Joe Patterson sitting over here by his counsel? A. Yes.

Q. Mr. Kay? A. Yes.

Q. Where did you see Joseph Patterson on that occasion? A. Just off of Cygnet Island.

Q. Was this on July 18 that you saw him there?

A. I believe it was July 15th.

Q. I am speaking of—are you thinking of August 15 or July 15? A. Oh. July 15?

Q. July 18, 1950, that was before the season opened; where did you see the defendant? Did you have an occasion to be in Ketchikan, Alaska, on or about that date? [9] A. July 18?

Q. Or about that date; yes.

A. It seems to me I was in town on July 18th.

Q. Did you see Joe Patterson about that time?

A. Yes. I met him on the street.

Q. Here in Ketchikan? A. Yes.

Q. Did you have a conversation with him?

A. I did.

Q. What did you say to him, and what did he say to you?

A. As well as I remember, it was more or less just, "Hello," and he remarked, "I will be seeing you."

Q. Is that all that was said to you, or you said to him? A. As far as I remember; yes.

Q. Now, calling your attention to the date of about August 15, 1950, did you see Joseph Patterson about that date? A. I did.

(Testimony of John Roger Lamb.)

Q. Was that the day that the commercial fishing season opened in Southeastern Alaska?

A. Yes.

Q. And where were you at that time?

A. I was stationed in Boca de Quadra.

Q. And what were you doing there?

A. Acting as Fish and Wildlife agent.

Q. Were you patrolling the area to prevent illegal fishing in [10] the closed waters of that area?

A. That is right.

Q. And where did the defendant contact you?

A. Just off Cygnet Island.

Q. Were you living out there?

A. I was staying on my boat; yes.

Q. Who was staying with you?

A. My wife.

Q. And is Cygnet Island within the Boca de Quadra area? A. It is.

Q. How close to Mink Bay is Cygnet Island?

A. It sets in the entrance. It guards the entrance to Boca de Quadra.

The Court: When you say Boca de Quadra, do you mean the closed area?

Mr. Baskin: No. I mean the entire area.

Q. And Cygnet Island is at the entrance of Mink Bay, is it? A. That is right.

Q. And is Mink Bay an arm of what is generally known as Boca de Quadra? A. It is.

Q. Where was Joseph Patterson when you saw him?

(Testimony of John Roger Lamb.)

A. Oh, about five hundred yards off of Cygnet Island.

Q. What was he in or on?

A. He was on his boat. [11]

Q. What boat was that?

A. Rolling Wave.

Q. Did you see him aboard the vessel?

A. I did.

Q. Did you go aboard the vessel?

A. No, I didn't.

Q. What did you do?

A. I just hung alongside.

Q. What boat were you in?

A. In the speedboat; in my own speedboat.

Q. And you stayed alongside the Rolling Wave?

A. I did.

Q. And did you hold onto the rail or something like that? A. I did.

Q. Who else did you see aboard the vessel?

A. I just saw Mr. Patterson and some of his crew members.

Q. Do you know the names of the crew members?

A. No, I don't. The only one I know is by the name of Red; that is all.

Q. And you saw Joe Patterson aboard?

A. That is right.

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Do you remember the approximate time that you saw him on the 15th? [12]

(Testimony of John Roger Lamb.)

A. It was about eleven o'clock.

Q. Eleven a.m.? A. Yes.

Q. In the morning? A. Yes.

Q. Now, tell the jury just what conversation you had with Joseph Patterson, what he said to you and what you said to him.

A. Well, as well as I remember why he asked about fishing up in the closed area, and I remarked, if I remember right, why I remarked, "What is the deal?" And he offered me a hundred dollars a thousand for fish that he would get out of the closed area.

Q. Did he mention what closed area that he wanted to fish in?

A. Well, I understood that it would be the head of Mink Arm.

Q. That area within a statute mile of Humpback Creek, the mouth of Humpback Creek?

A. Yes. Inside of that.

Q. Did he tell you when he would pay you?

A. Yes.

Q. That hundred dollars per thousand?

A. Yes.

Q. When did he tell you he would pay you?

A. It would be on the following evening.

Q. You mean after he had fished? [13]

A. That is right.

Q. Did you tell him about anybody else patrolling the area in there? A. I did.

Q. What did you say to him?

(Testimony of John Roger Lamb.)

A. I told him there were two other fellows working in the area with me.

Q. You mean two other other agents of the Fish and Wildlife Service? A. That is right.

Q. And they were working with you?

A. That is right.

Q. What else did you say to him about these two agents with regard to the money he was to pay you?

A. Whatever I got would have to go with them or be split with them.

Q. You would have to split with these two agents? A. That is right.

Q. Any money that you received from him; is that correct? A. That is right.

Q. Did Patterson ask you at that time if he could fish in that area that night?

Mr. Kay: Object to the question as leading, your Honor. Let him ask who asked who.

The Court: It is leading; that is true. You might ask him what the defendant said, if anything. [14]

Mr. Baskin: Very well, your Honor.

Q. What did Patterson say to you at that time about fishing that night?

A. I don't recall that he said anything outside of, "I will see you later this evening."

Q. Very well. Did you see him again that day?

A. I did.

Q. Where did you see him?

(Testimony of John Roger Lamb.)

A. At about the same distance off of Cygnet Island.

Q. What time of the day was it if you remember?

A. It was shortly before nightfall. In fact it was heavy dusk.

Q. Was anyone with you? A. Yes.

Q. Who was with you?

A. Richard Warner.

Q. Who is he?

A. He is a Fish and Wildlife agent.

Q. And you saw him about five hundred yards off Cygnet Island? A. Roughly; yes.

Q. Where was Patterson?

A. He was on board his boat.

Q. That is the Rolling Wave?

A. That is right.

Q. Did you see anybody else aboard the Rolling Wave? [15]

A. No; other than the crew members that I mentioned before.

Q. Did you have a conversation with Joe Patterson?

A. Yes. I believe I introduced this Warner to him.

Mr. Kay: Pardon me, your Honor. I am informed some of the Government witnesses are in the library. It would seem the tone of voice would be sufficient to violate Mr. Baskin's invocation of the rule. If they are to be excluded from the court-

(Testimony of John Roger Lamb.)

room, obviously the purpose is to exclude them from listening to the testimony.

Mr. Baskin: Well, we will tell them to go down in our office if there is anybody in there. Your Honor, I had no knowledge of that.

The Court: That is just one of the difficulties to which the Court referred at the time the motion was made, that we have very limited facilities here. Do you wish to continue your examination?

Mr. Baskin: Yes, your Honor, I do.

Q. You stated, I believe, that you had some conversation with Joe Patterson? A. I did.

Q. And who was present at the time you conversed with him? A. Richard Warner.

Q. And was Joe Patterson there?

A. He was.

Q. Will you tell the jury what Patterson stated to you, and [16] what you stated to him?

A. Well, I don't remember all the details right down to the bottom, but it seems to me that I introduced this Richard Warner to Mr. Patterson and, if I recall correctly, he asked if he was one of the boys, and I mentioned that he was.

Q. One of the agents of the Fish and Wildlife Service?

A. Yes, that is right; or one with me, I imagine.

Q. What else did you say, or he say?

A. He also asked about fishing that evening and how it would be to fish that evening.

Q. What did you tell him?

A. I told him no because, due to the fact that

(Testimony of John Roger Lamb.)

it was the opening day, why there were too many boats around.

Q. At the time you were talking with him did you say anything to him or did he say anything to you about splitting any money you received for permitting him to fish illegally?

A. Yes, that is right.

Q. What did he say, and what did you say?

A. Well, he said that would be more or less up to me, that it was to be divided among the three of us.

Q. At the time did you outline or did he outline any kind of signal arrangements that you could protect him on fishing in that area?

A. No. I outlined a signal setup. [17]

The Court: If you wish to retain your witnesses nearby and in the library, I think the order would be complied with if the door were kept shut.

Mr. Bailey: I don't think it is necessary. They are out there (indicating the lobby) with the rest of the witnesses. Close the door please, Mr. Bailiff.

The Court: Well, there is no necessity of doing it unless the witnesses are there.

Mr. Bailey: Well, of course, I can't run out every two minutes and watch them.

The Court: Well, you can instruct them of course.

Mr. Bailey: Yes; I did, your Honor. We didn't know they were there originally.

Q. Mr. Lamb on or about the 16th of August,

(Testimony of John Roger Lamb.)

1950, did you see the Rolling Wave or the defendant? A. I did.

Q. Where did you see them?

A. Just off of Cygnet Island.

Q. Did you see the vessel Rolling Wave?

A. I did.

Q. And was Joseph Patterson aboard?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes.

Q. What did he say, and what did you say? [18]

A. He asked, "How about this evening?" And I said the coast was all clear. That is all there was.

Q. Did he answer you? A. "O.K."

Q. What did he do, or what did the vessel do?

A. Proceeded on up Mink Arm.

Q. Did they fish any that evening?

A. I believe so; yes.

Q. Where did they fish?

A. Just inside the markers.

Q. You mean within one statute mile of Humpback Creek? A. That is right.

Q. Did you see them fish? A. Yes.

Q. What did they do in fishing?

A. Well, as near as I remember they had their net out. That is about all I remember. They just had their net out. I came down close to them and turned around and went back.

Q. Did you go near the area where they were fishing?

(Testimony of John Roger Lamb.)

A. Yes. I come within probably fifty feet or seventy-five feet of the boat.

Q. Of the Rolling Wave? A. Yes.

Q. And you saw them fishing?

A. That is right. [19]

Q. And that was within the closed area?

A. That is right.

Q. What did you do after you saw them fishing?

A. Just hesitated there for a moment and went on back down to my boat.

Q. You returned back to the boat on which you were living? A. That is right.

Q. Near Cygnet Island?

A. That is right.

Q. Now, calling your attention to about August 18, 1950, did you see Joe Patterson?

A. I did; yes.

Q. Where did you see him on that day?

A. Just off of Cygnet Island.

Q. Did you have a conversation with him?

A. I believe I did.

Q. What did you say to him, and what did he say to you?

A. If I recall correctly, he asked how it was "to fish up in there this evening," referring to that night.

Q. What did you say?

A. I said, "Everything is all clear."

Q. Did he reply?

A. Yes, I believe he did. I believe he said "O.K." or something to that effect, and went on up.

(Testimony of John Roger Lamb.)

Q. Where did he go after you had that conversation with him? [20] A. On up Mink Arm.

Q. Now, at the time you talked with him what was he on or what was he in?

A. Well, he was on the same boat, the Rolling Wave.

Q. The Rolling Wave? A. That is right.

Q. And did you see them go on up into Mink Arm?

A. Yes. I seen them leave and go on up.

Q. Where did they go to up into Mink Arm or Mink Bay? A. Up near Humpback.

Q. Up near Humpback Creek?

A. That is right.

Q. Did you have an occasion to go up there while they were near Humpback Creek?

A. I did.

Q. Did you see them fishing? A. I did.

Q. Where were they fishing?

A. Just inside the markers there.

Q. You mean just inside the closed area?

A. That is right.

The Court: Well, is this another closed area?

Mr. Baskin: No. This is the same.

Q. That is the closed area or within one mile of Humpback Creek that flows into Mink Bay; is that correct? [21] A. That is right.

Q. How did you get up there?

A. I went up in my speedboat.

Q. And was the defendant Joseph Patterson aboard? A. He was.

(Testimony of John Roger Lamb.)

Q. And what did you see the defendant or any of his crew on the Rolling Wave doing?

A. They were in a set.

Q. What did you see?

A. They were in a set.

Q. What do you mean by "in a set"?

A. That means when your net is in the water fishing.

Q. How close to the mouth of Humpback Creek were they fishing?

A. Well, that would be pretty hard to tell because it is dark up there, very dark, but they were well inside the area.

Q. Did you go alongside their boat?

A. I did.

Q. Can you tell the jury whether their net was tangled or not?

A. Yes; it was considerably tangled.

Q. What was the matter with the net? What do you mean when you say it was tangled?

A. Well, it seemed as though there was sticks and various debris off of the bottom in the web, silt and stuff in the [22] net.

Q. Did you say anything when you approached the vessel?

A. No. All I remember of saying was, "How did you get into such a mess," or something like that.

Q. How long did you stay up there or near the Rolling Wave?

A. Approximately forty minutes.

Q. What did you do while you were there?

(Testimony of John Roger Lamb.)

A. Helped untangle the web and stuff.

Q. And you spent about forty minutes there with them?

A. I would say that was about it.

Q. What did you do then?

A. I returned to my boat.

Q. At the time you were up there did you have a conversation with Joseph Patterson—Joseph C. Patterson?

A. I don't remember any specific conversation although I may have talked to him, which I undoubtedly did.

Q. He was aboard the vessel there at the time you were up there, was he not?

A. That is right.

Q. And you stayed about forty minutes?

A. Yes, I should say forty minutes.

Q. What did you do after you stayed there forty minutes?

Mr. Kay: I object. It is repetitious. He said he untangled the net.

Mr. Baskin: No. I said what did he do—— [23]

The Court: Objection overruled.

Q. What did you do after you had stayed there for about forty minutes?

A. As well as I remember, I got into my speed-boat and came back to my vessel.

Q. Your vessel?

A. No. It seems to me I went to the Chris-Craft first, the Fish and Wildlife Chris-Craft.

(Testimony of John Roger Lamb.)

Q. Well, but while you were at the Rolling Wave did you stay there or what did you do?

A. You mean during the ensuing forty minutes?

Q. Yes. Did you go aboard?

A. Yes, I did.

Q. And then after you had been there forty minutes, what did you do? Did you leave or what did you do?

A. Yes; I left.

Q. How did you leave?

A. In my speedboat.

Q. Do you know when or if the Rolling Wave left that day or night?

A. No, I can't say.

Q. Did you return to Cygnet Island?

A. I did.

Q. Now, calling your attention to on or about the 19th of August, 1950, did you see the defendant Joseph C. Patterson? [24]

A. On the 19th?

Q. Yes. A. Yes.

Q. Where did you see him?

A. Approximately the same place, just off of Cygnet Island.

Q. And that is near the mouth or entrance to Mink Arm of Boca de Quadra?

A. Yes. It guards the main entrance.

Q. Do you remember the time that you saw him?

A. I would say it was along about nightfall.

Q. And where was Patterson when you saw him?

A. He was on board his boat.

(Testimony of John Roger Lamb.)

Q. Is that the Rolling Wave?

A. That is right.

Q. How did you get to the Rolling Wave?

A. With my speedboat.

Q. And did you go aboard the Rolling Wave?

A. I did.

Q. Did you see Joe Patterson while aboard?

A. I did.

Q. Did you have a conversation with him?

A. I did.

Q. Now, tell the jury just what he said to you and what you said to him, and what he did, if anything, there.

A. Well, as well as I remember the first part of the conversation [25] why he asked how it was "for fishing this evening."

Q. Well, did you have any other conversation with him?

The Court: Well, did you answer that question of his? I mean the defendant's question and not the District Attorney's?

A. I believe I did.

The Court: What did you say?

A. I believe I told him that it was all right.

Q. You mean it was all right to fish that evening?

A. That is right.

Q. Did you have any other conversation with him?

A. Yes. Just shortly before he departed why he mentioned the fact that he had some money for me.

Q. Well, what did he say in that regard?

(Testimony of John Roger Lamb.)

A. Well, he mentioned that that was the money for the fish that he got the evening before.

Q. Tell the jury whether or not he gave you any money? A. May I ask a question?

Q. Just tell the jury whether or not he gave you any money at that time?

A. Is this August 19?

Q. Yes; this is August 19.

A. Yes. The answer is yes.

Q. And how much—where were you and where was he when he gave you the money? [26]

A. As well as I remember, I was in his cabin.

Q. That is aboard the Rolling Wave?

A. That is right.

Q. And what did he give you?

A. He gave me some money.

Q. How much money?

A. I believe it was one hundred and eighty dollars.

Q. Was that currency of the United States Government? A. Yes.

Q. Or money used as a medium of exchange in the United States and its possessions?

A. Yes.

Q. Was it in bills, silver or what?

A. Bills.

Q. Do you know what bills he gave you, what denominations?

A. I believe they were twenties.

Q. Do you know whether he gave you any fifties or not? A. No, I don't.

(Testimony of John Roger Lamb.)

Q. You don't remember that?

A. No, I don't.

Q. What did you do with the money?

A. I put it in my watch pocket.

Q. But you do know that he gave you one hundred and eighty dollars; is that correct?

A. Yes. [27]

Q. Then after receiving the money what did you do?

A. I proceeded from his boat to the Chris-Craft.

Q. You spoke of the Chris-Craft. What vessel is that?

A. That is a Fish and Wildlife vessel that they had down in that area, an extra craft besides me.

Q. Who was the captain or skipper of that vessel?

A. I believe his name is Richard Warner.

Q. Was there any other person aboard that vessel? A. Yes.

Q. What is his name?

A. Gene Cottrill.

Q. They were both agents of the Fish and Wildlife Service? A. That is right.

Q. How long after leaving the Rolling Wave was it that you went aboard the Chris-Craft?

A. Just a matter of minutes.

Q. Can you tell the jury about what distance in miles, if you know, the Chris-Craft was from the Rolling Wave?

A. Oh, roughly it might be something over a half a mile.

(Testimony of John Roger Lamb.)

Q. And you went directly from the Rolling Wave to the Chris-Craft? A. I did.

Q. And were both of those vessels at the time within the Boca de Quadra area?

A. Would you repeat that please? [28]

Q. Were both the vessels, Rolling Wave and the Chris-Craft, within the Boca de Quadra area?

A. Yes.

Q. And how near Cygnet Island, or what other point around there that is well known, were they?

A. Oh, approximately anywhere between five and eight hundred yards.

Q. From Cygnet Island?

A. That is right.

Q. At this point I want to ask you if the Boca de Quadra, the area known as Boca de Quadra, is within the Territory of Alaska? A. Yes.

Q. After going aboard the Chris-Craft who did you see aboard?

A. Richard Warner and Gene Cottrill.

Q. What did you do?

A. I laid the money on the table.

Q. On what table?

A. On the table of the Chris-Craft in its galley.

Q. How much money did you lay on the table?

A. One hundred and eighty dollars as well as I remember.

Q. Was that the same money that the defendant Joseph C. Patterson gave you a few minutes before? A. That is right.

(Testimony of John Roger Lamb.)

Q. What did you say to Richard Warner? [29]

A. I told him to divide it up evenly amongst us.

Q. What did he say or do?

A. He did just that if I recall.

Q. How did he divide it?

A. He divided it three ways, equal shares.

Q. How much did you receive?

A. Sixty.

Q. You mean sixty dollars?

A. That is right.

Q. How much did you leave there?

A. One hundred and twenty.

Q. What did Richard Warner do with the one hundred and twenty?

A. Well, that I don't know. They pocketed it, I imagine.

Q. After you received your sixty dollars what did you do? A. I returned to my boat.

Q. The boat you were living on?

A. That is right.

Q. And was that near Cygnet Island?

A. Yes.

Q. Now, at the time when you returned to Cygnet Island, your boat that you were living on, did you show the sixty dollars to your wife?

A. I believe I did.

Q. Did you tell her—what did you tell her?

A. I believe I told her that I had received that from the [30] Rolling Wave.

Q. Well, did you tell her you received it from Joseph C. Patterson?

(Testimony of John Roger Lamb.)

A. Yes. I don't know as I went into that much detail as to mention the man. I might have said Joe Patterson. I am not sure.

Q. Did you say anything to her as to whether or not you had split any money with the two other agents of the Fish and Wildlife?

A. I did; yes.

Q. Did you tell her that you had split the one hundred and eighty dollars with them?

A. That is right.

Q. Did you show her the money, the sixty dollars, that you received from Joe Patterson?

A. It seems to me that I did; yes.

Q. Now, calling your attention to the date of, on or about the date of August 21, 1950, did you see the defendant Joe Patterson on that day?

A. I did.

Q. Where did you see him?

A. Just off of Cygnet Island.

Q. Is that near the mouth of Mink Bay or Mink Arm? A. Yes.

Q. What was he in or on at the time you saw him? [31] A. On his boat.

Q. What boat was that?

A. Rolling Wave.

Q. How did you get to the Rolling Wave?

A. With my speedboat.

Q. Did you go aboard the Rolling Wave?

A. I did; yes.

Q. Did you have a conversation with Joseph Patterson? A. Yes.

(Testimony of John Roger Lamb.)

Q. What did he say to you, and what did you say to him?

A. If I recall correctly, he asked how it would be to fish that evening.

Q. What did you say?

A. I said no, it wouldn't be a good idea because the Number 11 was in there, namely a Fish and Wildlife boat.

Q. "Number 11," you mean that is a Fish and Wildlife vessel? A. That is right.

Q. That is a boat, isn't it?

A. That is right.

Q. And you told him that that vessel was in that area at that time? A. That is right.

Q. And did you have any other conversation at that time? A. I did.

Q. What did he say to you, and what did you say to him? [32]

A. I received one hundred dollars from him.

Q. Did he say anything to you when he gave you a hundred dollars?

A. Not that I recall of outside of, other than that was my cut, or something like that.

Q. What did he give you?

A. He give me a hundred dollars.

Q. Was that in currency of the United States?

A. It was.

The Court: I think you ought to be more specific. Currency includes anything, even coin.

Mr. Baskin: I will, your Honor. Thank you.

Q. Well, was that money of the United States?

(Testimony of John Roger Lamb.)

A. That is right.

Q. What was it? Dollars?

A. It was in bills; yes.

Q. Do you remember what they were, whether it was paper money or silver?

A. It was paper.

Q. And how much was it?

A. One hundred.

Q. Did he say anything else to you when he gave you that hundred dollars?

A. No, outside of, as well as I remember, that he asked how it was to fish that evening. [33]

Q. Did he tell you whether or not that was money for fish he had caught the previous evening?

A. Yes.

Q. Did he tell you that it was for fish he had caught the previous evening?

A. That is right.

Q. Now, upon receipt of that money what did you do?

A. I left and went on further patrol.

Q. What did you do with the hundred dollars that you received from Joe Patterson?

A. I put it in my pocket.

Q. Did you keep that one hundred dollars?

A. I did.

Mr. Kay: I didn't hear that answer.

A. I did.

Q. Did you divide any of it with any other agents? A. No, I didn't.

(Testimony of John Roger Lamb.)

Q. Why didn't you divide it?

A. Well, at the time, as I said before, Number 11 was in there, and of course I had two other agents in the territory, so consequently I didn't want to tip my hand or the other boys' either.

Q. Now, Mr. Lamb, on or about July 2nd or 4th, 1950, where were you?

A. In Boca de Quadra. [34]

Q. Who was with you? A. My wife.

Q. Were you living on your boat out there?

A. That is right.

Q. And how much money did you have—about how much did you have at the time you were out there?

A. Oh, approximately five dollars.

Q. Did you have an occasion to receive a hunting, fishing and trapping license about that date?

A. I did.

Q. Did you pay for it at the time?

A. No, I didn't.

Q. Who gave you that license?

A. Nancy Moxstead.

Q. Who is Nancy Moxstead?

A. She is a secretary for the Fish and Wildlife here in Ketchikan.

Q. Does she issue licenses for hunting and fishing? A. Yes.

Q. For the Fish and Wildlife Service?

A. Yes.

Q. Why didn't you pay her for the license?

(Testimony of John Roger Lamb.)

A. Because I didn't have any money on me at the time. I was on my boat.

Q. Did you have any other money on the boat, any other money [35] other than the five dollars that you had out there?

A. Not to my knowledge.

Q. Now, during the month of July and August did you receive any money? A. I did.

Q. How much did you receive during July?

A. In July I received one Territorial check.

Q. How much was that?

A. If my memory serves me right, it was three hundred and twelve dollars.

Q. And did you received any other check?

A. In the month of July?

Q. Well, in the month of August?

A. Yes.

Q. About how much was that?

A. That, I believe, was three hundred and ninety-two dollars.

Q. Now, is that all the salary money or money you received as salary or compensation while you were working out there for the United States Fish and Wildlife Service during June to about August 22, 1950? A. That is right.

Q. Now, out of your first check of three hundred and twelve dollars tell the jury about how much money you spent out of that. Did you have an occasion to spend any of it?

A. Out of the first check? [36]

(Testimony of John Roger Lamb.)

Q. Yes.

A. Let's see. I called up and flew into town with that first check.

Q. Well, who did you pay any money to for the service of flying you into town?

A. The Webber Air Service.

Q. Do you know how much that fare was?

A. I believe it was forty-six dollars.

Q. Did you have an occasion to pay a bill?

A. I did. I paid a Standard Oil bill.

Q. Do you know about how much that was?

A. Thirty dollars.

Q. Did you purchase any groceries?

A. Yes, I did.

Q. About how much did you spend for groceries? A. Ten dollars.

Q. Then when you got back to Boca de Quadra about how much money did you have on your possession?

A. Well, offhand I don't remember just for sure how much I did have when I got back.

Q. Well, would it have been approximately two hundred and twenty-six dollars?

A. I would say that that would be a very near figure.

Q. Now, out of your check that you received during August—do you know about what time you received that check? [37]

A. Shortly after the first of August.

Q. Incidentally—strike the statement please. And how much was that check that you received

(Testimony of John Roger Lamb.)

about the first of August or near the first week in August? A. Three hundred ninety-two.

Q. And did you get money for that? Was that check cashed?

A. Yes; it was cashed shortly afterwards.

Q. Did you have an occasion to spend any of that money? A. I did.

Q. Tell the jury what bills, if any, you paid out of that?

A. I paid Harry Kates eighty-five dollars out of that money.

Q. Did you buy anything else?

A. I bought some outboard parts.

Q. Do you know about how much that cost?

A. Around six dollars.

Q. Who bought those for you?

A. I believe John Wendler.

Q. Is he with the Fish and Wildlife Service?

A. Yes.

Q. And who cashed that check for you?

A. Wendler himself.

Q. Was he the one that paid Kates, or did he give a money order for that, or do you remember?

A. I don't just know for sure.

Q. But anyway out of that money you know you paid Kates [38] eighty-five dollars?

A. That is right.

Q. Did you buy any groceries?

A. Well, off and on; yes.

Q. Where did you buy those groceries?

A. From various boats in the area.

(Testimony of John Roger Lamb.)

Q. That you would see there near or in the Boca de Quadra area? A. That is right.

Q. And about how much did you spend for groceries?

A. Oh, it was around forty dollars.

Q. Now, Mr. Lamb, on or about the 22nd day of August, 1950, do you know about how much money you had on your person?

A. If I recall——

Q. Or had in your possession out there, rather?

A. If I recall correctly, I had something over seven hundred dollars.

Q. Well, did you have about six hundred and seventy?

A. Yes, I believe that is an accurate figure.

Q. Now, Mr. Lamb, did you have an occasion to pay also out of your second check the fee for a fishing license for yourself or your wife?

A. I did.

Q. About how much was that?

A. It was about three dollars, I believe. [39]

Q. And now, this six hundred and seventy dollars that you had, did that include the money which you had received from Joe Patterson?

A. Yes.

Q. And did it include also the money you received from your salary checks that wasn't spent?

A. That is right.

Q. And did it include the sixty dollars that you received from Joseph Patterson on or about the 19th of August, 1950? A. Yes.

(Testimony of John Roger Lamb.)

Q. And the one hundred dollars that you received about the 21st of August, 1950?

A. That is right.

Q. Now, the area you mentioned as Mink Bay, as part of the Boca de Quadra, that is also within the Territory of Alaska, isn't it?

A. That is right.

Q. And you received this money on these two occasions from Joe Patterson there within that vicinity; is that correct? A. Yes.

Mr. Baskin: You may cross-examine the witness.

Cross-Examination

By Mr. Kay:

Q. Mr. Lamb, this Boca de Quadra area is a rather large one, [40] isn't it?

A. That is right.

Q. It includes this whole area here? All this water? A. Yes.

Q. Could you come down and show us what is the area known as the Boca de Quadra?

A. (Indicating.)

Q. In other words this is the entrance to the Boca de Quadra; is that right? A. Yes.

Q. Out here at what is called White Reef and Slate Island? A. That is right.

Q. And then Mink Bay is this smaller projection coming down here toward the bottom?

A. That is right.

Q. Now, a considerable portion of the Boca de

(Testimony of John Roger Lamb.)

Quadra is open water, is it not? A. Yes.

Q. Fishing is perfectly legal there?

A. Yes.

Q. Now, the area which is closed to fishing—you correct me if I am wrong, Mr. Lamb—is this small triangular area that you have marked with a pencil there?

A. I didn't mark there; I marked here.

Q. Well, do you see the pencil mark there? I don't know who [41] made them. I thought that you had. Now, that is a triangular area. This small triangular area, marked with pencil, is closed water, is it not? A. That is right.

Q. And then each of the arms, each of the—where there is a creek that flows into one of these arms, also the area at the end of the arm, one statute mile from the mouth of the creek, is closed, so that all the rest of the water is open water; is that right? All of this water in here, and all of this water in here, and the water down Mink Arm down to the one statute mile, that is all open water; is that right?

A. That is right. The water between these two areas here, that is a closed area, and this is a closed area here, but this area right in here is open.

Q. Yes. Anyone can fish in there, perfectly legal during the open season?

A. That is right.

Q. Now, about how far would you say it was—is Cygnet Island right here at the mouth of Mink

(Testimony of John Roger Lamb.)

Arm, about where my finger is? A. Yes.

Q. And the area then from about Cygnet Island down to within one statute mile of the creek where you have drawn the red line is open water? [42]

A. Well, no. Cygnet Island, according to the way this is drawn now, is incorrect.

Q. I see. It should be a little farther down to the bottom of the map, to the bottom of the triangle there? A. That is right.

Q. Then the area between where that line would be, somewhat south of Cygnet Island, on down to the markers is open water?

A. Correct.

Q. Any boat can go in there and fish during the open season? A. That is right.

Q. About how far would you say it was from the base of the triangle here at the head of Mink Arm down to the markers?

A. From the head of the triangle?

Q. Well, no. From the base?

A. Well, it is approximately three miles, I would say.

Q. Mink Arm then is probably something like three and a half miles long or four miles long?

A. Well, it is slightly more than that. It would be about four miles because the marker is about a mile above the creek.

Q. You can take the stand. How well do you know Bill Tatsuda? A. Who?

Q. Bill Tatsuda? A. Not too well. [43]

(Testimony of John Roger Lamb.)

Q. You usually buy your groceries from him when you are in town, don't you?

A. That is right.

Q. You have known Bill for a long time, haven't you?

A. Yes.

Q. And did you ever talk to Bill or have occasion to talk to Bill about fishing?

A. I don't know as I have.

Mr. Baskin: Your Honor, I object to that. It is immaterial to the issues in this case.

Mr. Kay: It is just preliminary of course.

Mr. Baskin: It is cross-examination. That might be part of his case, but this is on cross-examination now.

The Court: I don't know of course what counsel seeks to elicit. If you are on the subject of entrapment, I am inclined to think that you should question him first about his dealings with the defendant. In other words, before you can introduce evidence or question him about some other offers that he made, such as you intimated you would disclose in your opening statement, you ought to question him about the immediate transaction.

Mr. Kay: I planned to do it the other way, but it makes no difference.

Q. Do you recall an occasion in June, approximately in June, according to your remark either just before or just after [44] you received word that you were to be stream watchman out there at Boca de Quadra, upon which you had a conversation with Joe Patterson, the defendant here, and

(Testimony of John Roger Lamb.)

Bill Tatsuda in the rear of Bill Tatsuda's grocery store? A. I don't recall that.

Q. Is it possible that you had such a conversation and don't recall it?

A. I don't know as it is.

Q. Well, now, isn't it a fact, Mr. Lamb, that on that occasion, sometime either shortly before or shortly after you received your appointment as stream watchman, you were talking to Bill Tatsuda in the back of the grocery store when Joe Patterson came in, and Joe Patterson then came into the back of the store?

Mr. Baskin: I object to that, your Honor. He hasn't connected that up with the defendant yet.

Mr. Kay: I just got through saying Joe Patterson came in there, came into the back of the store.

Mr. Bailey: The witness testified he did not remember any conversation, your Honor.

The Court: Well, but counsel is not foreclosed by his failure of memory. He can call it to his attention.

Mr. Kay: I can lay the foundation for impeachment.

Mr. Bailey: I understand that.

The Court: You may proceed. [45]

Q. Isn't it a fact, sir, that there was such an occasion, and Joe Patterson came into the back of the store, and you then had a conversation with him? A. I don't remember as I did.

Q. It is a fact that such a conversation occurred,

(Testimony of John Roger Lamb.)

is it not, Mr. Lamb? A. I don't remember it.

Q. And that on that occasion, isn't it a further fact that on that occasion you asked Mr. Patterson if he wouldn't come out to the Boca de Quadra this summer and fish?

Mr. Bailey: I object, your Honor, for this reason, that he said he didn't have any. He has answered it three times.

The Court: But, as I said a moment ago, counsel is not foreclosed by his failure to remember or even his denial.

Mr. Kay: I am trying to refresh his obviously weak recollection here, Mr. Bailey.

The Court: Objection overruled.

Q. Didn't you have such a conversation with Mr. Patterson, now, in which you invited him to come out to the Boca de Quadra and fish this summer, Mr. Lamb? You recall that, don't you?

A. I can't say that I do.

Q. And isn't it further a fact that during that conversation, Mr. Lamb, you told Mr. Patterson the large amount of money [46] that you had made during the previous season by selling fish to other persons out of the Boca de Quadra? You were stream watchman out there last year, were you not?

A. That is right.

Q. And isn't it a fact that you told Joe Patterson on that occasion that you made enough money out there selling fish the season before to buy a troller? A. I don't recall that.

Q. Well, you did buy a troller?

(Testimony of John Roger Lamb.)

A. Yes; but it isn't paid for.

Q. And did you also tell Joe Patterson that you made enough money to buy a house, a seven-thousand-dollar house, in Seattle?

A. I can't say that I did.

Q. All this being in the presence of Bill Tatsuda?
A. (No response.)

Q. You recall that, don't you?

A. I can't say that I do.

Q. Well, isn't it a fact that you talked to Bill Tatsuda along this line on several occasions during the winter?

Mr. Baskin: Your Honor, I object to that. Anything that wasn't said in the presence of the defendant would be immaterial.

Mr. Kay: That is my objection.

Mr. Baskin: It is mine, too. [47]

Mr. Kay: I am satisfying the Court's request. The Court requested me to tie the defendant in first. Now I would like to go back and bring in the fact that this same solicitation had been made to Bill Tatsuda, a friend and business partner, half-owner of the boat, the Rolling Wave.

Mr. Baskin: It still doesn't make any difference. It is not material as to what he said to Bill Tatsuda or anybody else. It is not in the presence of the defendant.

Mr. Kay: It is relevant on about half a dozen grounds, your Honor, including——

The Court: I am inclined to think that it is admissible because of the defense announced of en-

(Testimony of John Roger Lamb.)

trapment. Any offer of this kind, when it is denied, made to someone else, particularly one closely associated with the defendant, would be admissible, so on your statement, however, that you will connect it up with such a defense the objection will be overruled, but of course it will be wholly irrelevant unless you would put in some evidence in support of such a defense.

Mr. Kay: Oh, yes. Mr. Tatsuda and Mr. Patterson and a number of other people will testify.

The Court: Well, with that understanding the objection is overruled.

Mr. Baskin: And if he doesn't then this part of the testimony will be stricken from the record and the jury instructed not to consider it? [48]

The Court: Yes. Not only that, but counsel would certainly be in contempt of Court, I think.

Mr. Kay: Considering the risk, I will pursue the cross-examination, your Honor.

The Court: Well, I don't mean you have to succeed, but you have to produce some evidence of it so that it would not appear that you merely put this in for ballast here.

Mr. Kay: Of course not. I think I can convince the jury beyond any doubt on that question.

Q. Well, now, you were in Tatsuda's grocery store on a number of occasions during the winter, were you not, Mr. Lamb?

A. I usually purchase my groceries there; yes.

Q. And isn't it a fact that you, as far back as

(Testimony of John Roger Lamb.)

November or December of 1949, after the fall fishing season, told Bill Tatsuda on one occasion in his grocery store, discussed with him the amount of money made selling fish at Boca de Quadra during that season and talked over with him the prospects of the Rolling Wave, which he and Joe Patterson had just purchased——

Mr. Baskin: I think, your Honor, he should fix the time.

Mr. Kay: I did. November or December.

The Court: It all depends upon whether counsel is merely cross-examining him or wants to lay the foundation for impeachment. If he doesn't lay the foundation for impeachment, [49] he will be shut out of impeachment and limited to whatever he can develop on cross-examination.

Mr. Kay: I don't understand that ruling, your Honor.

The Court: You know of course that in order to lay a foundation for impeachment you have to put the question to the witness in impeaching form with the details as to the persons present and the time and place and circumstances.

Mr. Kay: Yes, sir.

The Court: Now, you don't have to do that, and if you don't——

Mr. Kay: It all depends on the answer he gives.

The Court: It depends on whether you merely want to cross-examine or you want to impeach him, so you do it either way you see fit. The Court isn't going to stop you.

(Testimony of John Roger Lamb.)

Mr. Kay: Well, until he replies to this question I don't know what my next question will be. If he denies the conversation, then I will put the impeaching question—did you tell him on or about such and such a time, so and so.

The Court: Yes.

Q. Do you recall the question, Mr. Lamb?

A. Will you repeat it, please?

Mr. Kay: Would the court reporter please find and read the question if possible?

Court Reporter: Q. "And isn't it a fact that you, as far back as November or December of 1949, after the fall [50] fishing season, told Bill Tatsuda on one occasion in his grocery store, discussed with him the amount of money made selling fish at Boca de Quadra during that season and talked over with him the prospects of the Rolling Wave, which he and Joe Patterson had just purchased——"

A. No, I don't recall that conversation at the time.

The Court: I think we will take a recess.

Q. The last response was, "at the time"?

A. That is right. At the time I don't remember.

Whereupon Court recessed until 2:00 o'clock p.m., October 23, 1950, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; the witness John Roger Lamb resumed the witness stand, and the cross-examination by Mr. Kay was continued as follows:

The Court: You may proceed.

Q. Mr. Lamb, I believe you testified on direct examination, did you not, that sometime in July

(Testimony of John Roger Lamb.)

you returned to Ketchikan from your post at Boca de Quadra? A. That is right.

Q. You recall about what day in July that was, sir?

A. Off hand, no, but it was in the early part of July.

Q. Would it have been about July 6th, 7th, or somewhere along in there, or later than that; can you recall?

A. I believe it was later than that.

Q. About July 18th? [51]

A. No. It would probably be about the 10th of July.

Q. Do you recall whether or not you returned to Ketchikan more than once during that month?

A. Yes. I came in twice.

Q. And the remainder of the month—how long were you in town on those two occasions; do you recall?

A. I didn't remain in town more than twenty-four hours at either time.

Q. The remainder of the month you spent out there at your station at Boca de Quadra?

A. That is right.

Q. Well, now, I believe you said also, did you not, on cross-examination that you paid Webber Air Service forty-six dollars, fare for your first trip in? A. That is right.

Q. How did you come in the second time?

A. I came in by boat.

Q. Now, on this occasion when you paid Webber

(Testimony of John Roger Lamb.)

Air Service forty-six dollars, was that also the occasion when you paid your Standard Oil bill of thirty dollars? A. That is right.

Q. And bought about ten dollars worth of groceries? A. That is right.

Q. Did you buy those down at Tatsuda's store?

A. No, I didn't. [52]

Q. Did you visit Tatsuda's store on that occasion? A. I don't recall that I did.

Q. It is possible that you did and don't recall it?

A. No, I don't believe I did.

Q. On the second occasion when you were in Ketchikan did you on that occasion visit Tatsuda's store?

A. Yes. We bought some groceries there. My wife did anyway.

Q. Your wife did? A. Yes.

Q. Would that have been on about July 18th? About how long was it after your first trip?

A. Just shortly after my first trip.

Q. Well, you testified on direct examination, did you not, that on July 18th you met Joe Patterson on the street in Ketchikan? A. Yes.

Q. And would it have been on that same occasion, on about July 18th, the same day, the same twenty-four-hour period, that you also went to Tatsuda's grocery store and bought some groceries?

A. I didn't on either occasion enter Tatsuda's store. My wife bought the groceries.

Q. Then it is your testimony that you never were in Tatsuda's grocery store on any day in the month

(Testimony of John Roger Lamb.)

of July, 1950? A. I don't believe I was. [53]

Q. And that—were you in the grocery store during the month of June, 1950?

Mr. Baskin: Your Honor, I am going to object to that as not material to the cross-examination.

The Court: Well, I assume this is a preliminary question pure and simple.

Mr. Kay: I am trying to pin down the respective dates of the conversations which occurred, your Honor.

The Court: Objection overruled.

Q. Were you in the grocery store of Bill Tatsuda any day in the month of June, if you can recall?

A. I believe I did pick up some groceries there. What day of the month, I don't remember.

Q. You were appointed, I believe, to your job this summer on the 7th day of June, 1950?

A. That is right.

Q. Is it possible you were in Bill Tatsuda's grocery store at about that time?

A. Yes. We took on supplies before we went to Quadra. Yes.

Q. Then you believe it is possible you were in Mr. Tatsuda's grocery store roughly about June 7, 1950? A. June; yes.

Q. Now, were you there at any time later in the month of June, do you recall? When did you leave—pardon me. Strike that question. When did you leave to go out to your job [54] at Boca de Quadra?

(Testimony of John Roger Lamb.)

A. I believe I left about the 8th for Boca de Quadra.

Q. 8th of June, 1950?

A. Yes. It could have been either the 7th or the 8th, but it was one of those two days, I believe.

Q. And did you return to Ketchikan at any time during the month of June after you left? Was your first trip that trip you spoke about in July?

A. Yes, I believe that was my first trip back.

Q. So as far as you can recall you were not in Ketchikan at any time from the 7th or 8th of June until about the 10th of July?

A. Yes; I would say that is fairly accurate.

Q. Well, now, sometime about the 7th of June or thereabouts when you were in the grocery store on this occasion did you have a conversation with Bill Tatsuda?

A. I don't recall that I did, other than picking up our groceries.

Q. Well, now, isn't it a fact, Mr. Lamb, that you did have a conversation with Mr. Tatsuda on about June 7th, 1950, in his grocery store at which time you urged him to come out to the Boca de Quadra and engage in illegal fishing and soliciting him to pay a bribe for that illegal fishing?

A. I don't recall anything like that.

Q. You don't recall anything like that? [55]

A. No.

Q. And going back now to the occasion when you were in town on July 10th, about July 10th, did you see Joe Patterson at any time on that day?

(Testimony of John Roger Lamb.)

A. On July 10th here in town?

Q. Here in town; Ketchikan, Alaska?

A. I believe I passed him on the street.

Q. Now, is that the occasion on which you said you had this conversation with him in which he said he would see you later, or was that on July 18th?

A. Well, I know it was one of the times that I was here in town.

Q. You don't recall whether it was the first trip in or the second trip in; is that right?

A. That is right.

Q. You testified this morning, did you not, that it was on July 18th?

A. That would put it right, I believe.

Q. Well, then going back to my previous question, did you see Joe Patterson on July 10th, the first trip you were in town?

A. I don't believe so.

Q. Did you visit Tatsuda's grocery store on July 10th? A. No.

Q. Isn't it a fact, Mr. Lamb, that either on July 10th or on [56] July 18th you visited the store of Bill Tatsuda in Ketchikan, Alaska, and then and there had a conversation with Bill Tatsuda and the defendant, Joe Patterson, during the course of which conversation you solicited them to come to the Boca de Quadra where you were engaged as a stream watchman and there engage in illegal fishing and pay you a portion of the proceeds as a bribe?

A. I don't recall that.

Q. And isn't it a fact that during this same con-

(Testimony of John Roger Lamb.)

versation on either one of these two dates you told them how much money you had made selling illegal fish the season before, and told them that it was safe to come out that you had the other two men out there fixed?

A. I don't recall any such statement as that.

Q. Would you deny that on one of those occasions when you were in the store you solicited them to come out? A. I do.

Q. And do you deny that you told them that you had the other two watchmen fixed? A. I do.

Q. You did have the other two watchmen fixed, didn't you, you thought?

A. After he arrived there; yes.

Q. At that time you had—in July you had not engaged in any conversation with these other watchmen? [57] A. No.

Q. You hadn't fixed them yet; is that right?

A. There hadn't been any conversation because I didn't know them in July.

Q. You had served as watchman at Boca de Quadra two previous seasons, hadn't you?

A. That is right.

Q. How many watchmen were there during the 1949 season? A. One.

Q. How many were there during the 1948 season? A. One.

Q. This year there were three; is that right?

A. That is right.

Q. Well, continuing the conversation, did you—do you deny that during the conversation on either

(Testimony of John Roger Lamb.)

July 10th or July 18th in the grocery store of Bill Tatsuda that you told Joe Patterson in the presence of Bill Tatsuda how much money you had made during the previous season?

Mr. Baskin: Your Honor, just a minute. I object to that. That is assuming he had a conversation, and his testimony is that he did not have a conversation with him.

The Court: I thought he prefaced his question by the words "do you deny."

Mr. Kay: "Do you deny"—obviously I am laying a foundation for impeachment, your Honor. [58]

Mr. Baskin: As I understand it, he prefaced it by saying "in that conversation." I don't remember him saying "do you deny in that conversation," but I will stand corrected if the record shows otherwise, if the Court please.

The Court: I think the objection will have to be overruled.

Q. Do you recall the question, Mr. Lamb?

A. No, I didn't have any conversation to that effect at all.

Q. Now, you say that on July 18th or July 10th you met Joe Patterson on the street in Ketchikan; is that right? A. That is right.

Q. And what was said; what did he say to you, and what did you say to him on that occasion?

A. As far as I know, it was just, "Hello," and he said, "I will be seeing you."

Q. That is as much as you can recall—"Hello";

(Testimony of John Roger Lamb.)

“I will be seeing you”? A. That is right.

Q. Did you understand there was something sinister about that conversation, that Mr. Patterson was going to come out and illegally fish, or anything like that? A. Not necessarily.

Q. Had you ever had any conversation up to that time with Mr. Patterson about his coming out to the Boca de Quadra and fishing illegally during the season? [59]

A. Not as to laying plans for fishing there; no.

Q. Well, had you had any conversation with him about fishing? A. Not that I recall.

Q. Do you know Joe Patterson? A. I do.

Q. How well do you know him?

A. Just an acquaintance; that is all.

Q. Since the close of the fall season in 1949, do you recall any other conversation you had with Joe Patterson down to that date? By “that date” I mean July, 1950. A. No, I can’t say that I do.

Q. Did Joe Patterson—do you know whether or not Joe Patterson fished during the 1949 season?

A. I do not.

Q. You know that he had not fished prior to the 1949 season, do you not?

A. I don’t know whether he fished in 1950 or not. I didn’t see him fish.

Q. You didn’t see him fish in 1950?

A. Or, in 1949, rather.

Q. And you don’t know whether or not he had ever fished before the 1950 season; is that right?

A. That is right. Prior to 1950 I don’t know.

(Testimony of John Roger Lamb.)

Q. So when you met—did you answer my question as to whether or not you had any other conversation with him prior to [60] July, 1950, about fishing? A. No.

Q. You don't recall any other conversation with him? A. Not as to fishing; no.

Q. As to bribing Government officials, had you had any conversation? A. No.

Q. As to your taking money for selling fish out of the Boca de Quadra, had you any conversation?

A. No.

Q. Had you ever up till that date according to you urged him to come out to the Boca de Quadra and fish either before or during the season in the closed area? A. No, I don't believe so.

Q. And so that this conversation July 18th or July 10th when you said, "Hello," and he said, "I will be seeing you," is the first conversation you had?

A. It was the first conversation that had any pertinence to him being down there where I was.

Q. Did you gather from that conversation that he would be seeing you later that day around town or that he was using that just as the salutatory way in which some people say, "Well, I will be seeing you," or did you have an idea that that meant he was coming out to the Boca de Quadra and help you steal fish? [61]

A. Well, I assumed that he probably would be out there.

Q. And would bribe you to let him steal fish?

(Testimony of John Roger Lamb.)

A. Not necessarily.

Q. You just thought that meant he would be out to the Boca de Quadra? A. That is right.

Q. That is a rather popular fishing place, is it not? A. It is.

Q. Isn't it a fact that the Boca de Quadra catches the first days of the season have always been some of the best in the area? A. That is right.

Q. That is one of the best places to fish early in the season, isn't it. A. It is.

Q. Did you know at that time that Joe Patterson was going fishing in 1950?

A. I wasn't sure of it; no.

Q. Hadn't you talked to anybody about it?

A. I had seen the boat.

Q. You had seen the boat and knew that it was being rigged up for fishing?

A. That is right. I had heard that he had bought it.

Q. Who had you heard that from; do you recall?

A. That I don't know. [62]

Q. Did you talk to Bill Tatsuda about it?

A. No, I didn't.

Q. And had never talked to Joe Patterson?

A. No, sir.

Q. And now, the next time you saw Joe Patterson, I believe you testified, did you not, was on August 15th, the opening day of the season?

A. That is right.

Q. Do you recall whether or not you saw him

(Testimony of John Roger Lamb.)

on the evening of August the 14th in the Boca de Quadra area? A. I can't say that I did.

Q. Do you recall an occasion on the evening of August 14th when you observed the Rolling Wave at a point a mile or a mile and a half away from Cygnet Island and proceeded to run your speedboat over and go aboard the Rolling Wave on the evening of August 14th? A. I don't remember that.

Q. Well, isn't it a fact that you did run out a mile and a half to meet the Rolling Wave as it came into the Boca de Quadra, your anchorage behind Cygnet Island? A. On August 15th?

Q. On August 14th, Mr. Lamb?

A. I don't recall that.

Q. And isn't it also a fact you went aboard the Rolling Wave and there held a conversation with Joe Patterson? [63] A. No.

Q. And isn't it further a fact that on the evening of August 14th while you were aboard the Rolling Wave you again solicited Joe Patterson to come into the closed area of the Boca de Quadra and fish and to give you money for fishing in that area, sir?

A. No.

Q. And isn't it a fact that on that occasion you again reassured Joe Patterson that you had the other two agents of the Fish and Wildlife Service that were in the area fixed? A. No.

Q. And did you have them fixed on August 14th?

A. As I recall, it was on August 15th when I first went aboard.

(Testimony of John Roger Lamb.)

Q. Isn't it possible it was the evening of August 14th, the night before the season opened?

A. Well, as I remember it, it was August 15th when I first met the man out there in that area with his vessel.

Q. But it is possible, is it not, that it was the night of August 14th? A. I hardly think so.

Q. You hardly think so. And isn't it a fact that in that conversation you urged them to go into the closed area and fish that very evening, the night of August 14th? A. No. [64]

Q. And told them that there were a lot of salmon up in the mouth of the creek, three or four thousand?

A. I don't recall that on the evening of August 14th at all.

Q. And isn't it a fact that they then and there told you they would look awfully silly with a hold full of fish and a wet net the morning that the season opened, and that they refused to go in that evening? A. I don't remember that at all.

Q. Well, now, in this conversation which you say occurred on the morning of August 15th did you on that occasion run out to the boat in your speed-boat? A. I did.

Q. And you went about a mile and a half to meet the boat when it came in; is that about right?

A. Well, I don't know as it was that far.

Q. Well, it was as they came around the other island that is about a mile and a half away from Cygnet Island; was it?

(Testimony of John Roger Lamb.)

A. About a half a mile would probably put it pretty close.

Q. And I believe you testified, did you not, that you did not go aboard the boat on that occasion?

A. That is right.

Q. But that you remained in your speedboat alongside the Rolling Wave?

A. That is right.

Q. And I believe you testified on direct examination, did you [65] not, that you had a conversation with Joseph Patterson at that time?

A. That is right.

Q. I believe you testified that Patterson asked about fishing in the closed area at that time?

A. That is right.

Q. Is that the first occasion, Mr. Lamb, according to your testimony upon which you ever discussed with Joe Patterson the question of illegal fishing or fishing in the closed area of the Boca de Quadra? A. It is.

Q. And is it your testimony that he asked about such fishing, inquired of you about such fishing?

A. Will you ask that again please?

Q. I said, is it your testimony, Mr. Lamb, that Joseph Patterson asked you about such fishing?

A. That is right.

Q. I believe you testified, did you not, that someone during that conversation named the price at one hundred dollars a thousand fish?

A. That is right.

(Testimony of John Roger Lamb.)

Q. And that he agreed to pay right afterwards?

A. He agreed to pay the following evening, or twenty-four hours later.

Q. And I believe you testified on that occasion that you told [66] Joe Patterson that there were two other agents in the area and that you had to split with them? A. That is right.

Q. And told them you had made a fix? When did you make the fix?

A. Shortly after I met him out there. I figured that they could be talked into it.

Q. In other words it is your testimony that at that time you had not approached one of these other agents with regard to illegal fishing?

A. That is right.

Q. But that you told Joe Patterson that you had; is that right?

A. That is right.

Q. Thinking that you could fix it with them?

A. Yes; being fairly sure of my grounds.

Q. You felt, you had had some conversations which led you to believe that, that you could fix it?

A. Yes; I would put it that way.

Q. At the time you had these conversations with them which led you to believe that they could be fixed, had you talked to anybody about coming in there and fishing illegally?

A. Other than Mr. Patterson, you mean?

Q. Yes.

Mr. Baskin: Your Honor, I object to any ques-

(Testimony of John Roger Lamb.)

tion [67] along that line. Even if true, it is immaterial. It is not admissible.

Mr. Kay: I see no objection to it.

Mr. Baskin: Well, this defendant is the only one on trial. We are not trying anybody but Joe Patterson and——

The Court: Will you repeat the question please?

Court Reporter: Q. "At the time you had these conversations with them which led you to believe that they could be fixed, had you talked to anybody about coming in there and fishing illegally?"

A. "Other than Mr. Patterson, you mean?"

Q. "Yes."

The Court: Well, I think in view of the defense that has been announced here that it is competent. Objection overruled.

Q. Did you understand the question, Mr. Lamb?

A. Well, I am kind of fouled up now.

Q. Let's start again. You say that the first time you saw Joe Patterson and talked to him about illegal fishing was the morning of August 15, 1950, in the area of Boca de Quadra; is that right?

A. That is right.

Q. You never had talked to him at any time prior to that about illegal fishing in that area or about accepting a bribe?

A. That is right. [68]

Q. Now, you say that prior to that time, however, you had had conversations with the other two stream watchmen?

A. Yes.

Q. What is it—Richard Warner?

A. Yes.

(Testimony of John Roger Lamb.)

Q. And, I believe, Cottrill? A. Cottrill.

Q. Which led you to believe that they would accept a bribe also and go along with some illegal fishing; is that right? A. That is right.

Q. Well, now, what I am getting at is what brought that subject up with them; had you asked other people to come in there? A. No.

Q. You hadn't?

A. After I had talked to Patterson I was just running on sheer luck that I could talk them into it.

Q. Well, but what I am getting at, Mr. Lamb, is you say that you had these conversations with them, which led you to believe that they would go along with you, prior to the time you first talked to Joe Patterson?

A. If that is the idea that you have, why you misunderstood me, because I didn't talk to them on that until after I had talked to Mr. Patterson. [69]

Q. Up until that point then you had never mentioned anything to them?

A. I just figured that I could run on luck and take them in because they seemed to be young fellows and they would go for it, which they did.

Q. Well, didn't you say just a few minutes ago on direct examination, on cross-examination, right here that something in conversations with them had led you to believe that they would go along?

A. Well, in their conversation they seemed to be easy, friendly and easy. They acted like they wanted money.

Q. Had you had such a conversation with them

(Testimony of John Roger Lamb.)

in which you got that idea prior to Joe Patterson's appearance there on the morning of August 15th; is that right?

A. Just through their general talk; yes.

Q. But that was prior to August 15th?

A. That is right.

Q. And so you thought at that time, prior to going aboard Joe Patterson's boat, you thought at that time that they would probably go along with the deal for illegal fishing?

A. Well, that was my general idea; yes.

Q. And in fact you told Joe Patterson they would go along; is that right?

A. That is right.

Q. And that you had it fixed; did you not? [70]

A. That is right.

Q. Then you had it in your mind to sell fish and take a bribe prior to meeting Joe Patterson the morning of August 15th, didn't you?

A. I had it in my mind, if someone would jolt me, I would accept it.

Q. If someone came along, why you would go along? A. Yes.

Q. As a matter of fact, Mr. Lamb, during the month of June and July you solicited several other people to come out there and fish in the Boca de Quadra and split the take with them, did you not?

A. Not that I recall.

Q. Now, isn't it a fact—you know Chester Klingbeil, do you not, a fisherman here in town?

A. I know of him; yes.

(Testimony of John Roger Lamb.)

Q. Did you ever have any conversation during the month of June or July, 1950, with Chester Klingbeil in the City of Ketchikan, Alaska, in which you solicited him to come to the Boca de Quadra and fish illegally and split the take with you?

A. Not that I recall; no.

Q. You know Rollie Lindsey, do you not?

Mr. Baskin: Your Honor, I am going to object to that. Again I don't see where all this is material. [71]

Mr. Kay: I just asked him if he knew Rollie Lindsey.

Mr. Baskin: Well, it is still immaterial as to the defendant's guilt of giving him a bribe on two occasions.

The Court: Well, I think that it is merely preliminary, the question you object to now, preliminary to asking the same questions that he has asked with reference to others, and in view of the announced defense and the rulings of the Court I think the objection will have to be overruled.

Q. You may answer the question.

The Court: It is somewhat out of order, but he has definitely promised to connect it up.

Q. You know Rollie Lindsey, do you not?

A. I do.

Q. Otherwise known as Blackie; do you?

A. That is right.

Q. Skipper of the Diamond T, is he not?

A. That is right.

Q. Did you see the Diamond T in the area of

(Testimony of John Roger Lamb.)

the Boca de Quadra near Cygnet Island on the morning of August 20th, Sunday, 1950?

Mr. Baskin: I object to any testimony along that line for the same reason. It is imaterial as to who else was out there. The defendant is the only one that is here on trial, and they are just trying to insert in a lot of evidence [72] that is immaterial, irrelevant and prejudicial and shouldn't be entered.

Mr. Kay: May I be heard?

The Court: Well, it would be prejudicial to the prosecution if there was no evidence to amount to anything introduced by the defense of entrapment, but there has already been a promise to do that, and in view of that I think that the objection will have to be overruled because I think it is competent.

Q. You may answer the question. Do you recall the question?

A. What was that again about Mr. Lindsey?

Q. Well, it was about Mr. Lindsey on the Diamond T being in the area of the Boca de Quadra near Cygnet Island on the morning of August 20, 1950?

A. I am not sure just as to his location, but I know he was out there.

Q. And you went aboard the Diamond T on that occasion, did you not?

A. I don't recall going aboard.

Q. Well, did you go aboard the Diamond T on any—what is the first time you recall seeing the Diamond T in the area of the Boca de Quadra this summer?

(Testimony of John Roger Lamb.)

A. Somewhere around that date that you mentioned. I am not positive of the date.

Q. August 19th, 20th, 21st, sometime around there? [73]

A. Somewhere in there. I remember seeing the boat there.

Q. Well, did you at that time when you saw the Diamond T in the area go aboard the Diamond T?

A. I don't recall going aboard.

Q. Well, now, isn't it a fact, Mr. Lamb, that you did go aboard the Diamond T on that occasion and then and there in the presence of Rollie Lindsey and his cook, whose name I do not know but who will be produced here, but isn't it a fact in their presence you had a conversation with Rollie Lindsey, the skipper of the Diamond T, in which you solicited him to come into Boca de Quadra and catch fish illegally and split the take with him?

A. I don't recall that I did.

Q. Well, isn't it a fact that you had such a conversation? You know that you did, do you not, Mr. Lamb?

A. I don't recall it.

Q. And isn't it also true that in that same conversation that Rollie Lindsey refused to go in on grounds that it was Sunday and that he would look silly, again, with a hold full of fish and a wet net on Sunday, a day which was closed to fishing; do you recall that?

Mr. Baskin: Your Honor, even though they have announced that the defense is of entrapment of this defendant, the fact that he might have solicited

(Testimony of John Roger Lamb.)

other persons unconnected with the defendant is wholly immaterial, and even suppose [74] that he had, it wouldn't make any difference as to this defendant bribing him. A solicitation of another person doesn't justify another one to come in and pay a bribe.

Mr. Kay: May I be heard, your Honor?

The Court: Well, I don't think it is necessary. I think that where he denies any entrapment of the defendant that this is proper cross-examination. Objection overruled.

Q. Well, you did solicit Blackie Lindsey to go in and fish about August 19th, 20th or 21st, didn't you—ask him to come in and fish?

A. I don't recall that; no.

Q. And you did solicit Chester Klingbeil to come out and fish even before the season started, did you not? A. I don't recall that either.

Q. I see. Well, now, you testified, I believe, did you not, on your direct examination that on August 16, 1950, you saw the Rolling Wave in the area of Cygnet Island, Boca de Quadra?

A. On August 16th?

Q. Yes, sir. A. Yes.

Q. And I believe you testified on direct examination that you had a conversation with Patterson on that occasion, did you not?

A. That is right. [75]

Q. And that he asked—you testified, did you not, that he asked, "How about this evening?"

A. Yes.

(Testimony of John Roger Lamb.)

Q. And that you replied, "The coast is clear"?

A. That is right.

Q. Now, you had already told Patterson, had you not, that the other two agents would be sent to different points away from the immediate area of the illegal fishing and would signal in case they saw anybody coming? A. That is right.

Q. You had explained a signal, a light system, had you not? A. That is right.

Q. And when had you told him that would occur? When had you told him that?

A. If anyone should happen to show up that would arrest him in the area.

Q. When did you tell Joe Patterson that about the signals?

A. I believe that was the evening of the 16th.

Q. The evening of the 16th? A. Yes.

Q. Then I believe you testified that the Rolling Wave went on into the closed area and fished inside the markers on the evening of August 16th?

A. That is right.

Q. And did you see the Rolling Wave come out of the closed [76] area? A. I did not.

Q. Where were you at the time they quit fishing and left; do you know?

A. As far as I know, I was on board my boat.

Q. Well, do you know whether or not the Rolling Wave was back in the area on August 17th?

A. No, I don't know whether he was there or not.

Q. Now, let's see, August the—what are the dates

(Testimony of John Roger Lamb.)

on that? August 15th was on what day of the week; do you recall?

A. No, I don't recall what day it was, other than the 15th. It was on a Monday, wasn't it? I don't know for sure. I am just guessing about that.

Q. Suppose you glance at this? I will hand you what purports to be an official tide table put out by the Tongass Trading Company, put out for the year 1950, and ask you if that would refresh your recollection as to the days of the week, that portion of the tide table?

A. Well, I guess the 15th, that was on a Tuesday.

Q. Monday was the 14th; Tuesday, the 15th?

A. That is right.

Q. And Wednesday then was the 16th, was it not? A. That is right.

Q. Now, it is your testimony that on Wednesday evening they went in and caught these fish? [77]

A. That is right.

Q. And didn't they come back into the area of the Boca de Quadra on Thursday evening, August 17th, Mr. Lamb?

A. I don't recall seeing them on the 17th.

Q. Well, don't you recall going aboard the boat on the evening of August 17th in order to be paid for the fish which had been caught the night before?

A. No. I recall that as the night of the 18th. It was the 18th as well as I remember it.

Q. Well, then you went a little overtime to get your first pay, didn't you? A. That is right.

(Testimony of John Roger Lamb.)

Q. If they didn't get back there until the 18th?

A. That is right.

Q. The deal was that you were to get your money within twenty-four hours?

A. That is right.

Q. Well, now, doesn't that refresh your recollection that they came back in on the evening of August 17th, the next night, said they had been in Ketchikan, sold their fish; you went aboard the boat, and Joe Patterson paid you a sum of money as your share of the fish?

A. I don't believe it was the 17th.

Q. And I believe you testified that on the—according to your testimony then on direct examination, no money was paid to [78] you until Friday evening, the 18th of August?

A. That is right.

Q. And that at that time the sum of one hundred and eighty dollars was paid?

A. That is right.

Q. Well, isn't it a fact that on the evening of August 17th you were paid a sum of money by Joseph Patterson in the cabin of the *Rolling Wave*?

A. I don't recall that; no.

Q. And how much money did you say you were paid?

A. Well, all I know is I just pulled it out. It was one hundred and eighty dollars. It was counted out.

Q. What was the deal that you had made with Mr. Patterson?

(Testimony of John Roger Lamb.)

A. One hundred dollars a thousand.

Q. And that would be what? Eighteen hundred fish? A. I imagine.

Q. As a result of the fishing on the evening of the 16th? A. That is right.

Q. Well, isn't it a fact, Mr. Lamb, that Mr. Patterson paid you on that occasion the sum of two hundred and eighty dollars?

A. I don't believe so.

Q. Well, could it be possible that he did pay you two hundred and eighty dollars and that maybe you didn't want to split all of that with your fellow agents so you put a [79] hundred in your pocket?

A. I don't believe so. I wadded it altogether and took it over to the Chris-Craft.

Q. But it is possible it might have been two hundred and eighty?

A. If it was, I certainly didn't get any part of two hundred and eighty.

Q. They shortchanged you? Well, now, you say you did come aboard the boat on the evening of the 18th? A. That is right.

Q. And I believe you testified, did you not, that a conversation occurred with Joseph Patterson at that time? A. That is right.

Q. And I believe you said that conversation started off with Patterson asking you, "How about going in and fishing this evening?" A. Yes.

Q. And that you told him all was clear and to go on in? A. That is right.

(Testimony of John Roger Lamb.)

Q. Did you recall on that conversation anything being said about some fish which they had already caught and had in the hold?

A. It seems to me he did say something about that, that there were fish in the hold.

Q. And didn't he show you, ask you to take a look so he [80] wouldn't shortchange you on what fish he caught illegally? Do you remember that he told you to take a look and guess how many fish there were down there, and you said about two hundred?

A. I don't recall the number.

Q. It could have been about two hundred, couldn't it?

A. It is possible.

Q. And then I believe you said that he went on in and fished that evening, the evening of August 18th?

A. That is right.

Q. Friday evening? Now, when did you get your pay for those fish?

A. As well as I recall, it was on a Monday.

Q. So again more than twenty-four hours passed?

A. That is right.

Q. And on Monday how much did you receive?

A. As well as I remember, it was a hundred dollars.

Q. Isn't it a fact, Mr. Lamb, that the first payment to you on the evening of August 17th was two hundred and eighty dollars?

A. If it was, I sure didn't know about it.

Q. And that the second payment—now, he fished on the evening of August 17th, didn't he; fished on the evening of the 16th; fished on the evening of the

(Testimony of John Roger Lamb.)

17th; and skipped and fished on the evening of the 19th; isn't that right? [81]

A. I didn't recall him fishing on the evening of the 17th. I didn't even see him the 17th as far as I remember.

Q. Did he fish on the evening of the 19th?

A. I am not sure of that either.

Q. It is your testimony that you only know of two occasions? A. That is right.

Q. Well, isn't it a matter of fact that your second payment received from Joseph C. Patterson was in the amount of two hundred and fifty dollars?

A. Not that I recall; it wasn't.

Q. And also isn't it a fact that the payment on Monday, August 21st, was in the amount of twenty dollars because they only got a few fish that time?

A. I don't remember anything about that.

Q. Other than this one occasion, Mr. Lamb, on which you say you tossed the money on the desk in the Chris-Craft and it was divided up by Richard Warner—— A. That is right.

Q. Did you pay any other money to your fellow Fish and Wildlife agents in the area to permit illegal fishing in the Boca de Quadra this summer?

A. This summer? No.

Q. Have you ever been convicted of a crime, Mr. Lamb? A. Up until this, no.

Q. It is a fact, is it not, that you have plead guilty to the [82] crime of accepting a bribe?

A. That is right.

Q. And that you are awaiting sentence?

(Testimony of John Roger Lamb.)

A. That is right.

Q. You have not yet been sentenced?

A. No, I haven't.

Q. Do you have any hope of obtaining any better or more lenient treatment because of your testimony in this case? A. No, I don't.

Q. You are just taking your chances?

A. That is right.

Mr. Kay: Pardon me a moment, Your Honor. Just about one more question.

Q. During these occasions, conversations with Mr. Patterson, when you claim that he paid you the money, Mr. Lamb, isn't it a fact, don't you recall, that Joe showed you the fish tickets?

A. No, I don't.

Q. You don't remember that he showed you the fish tickets to verify the amount that he sold?

A. No.

Q. And that your split on the first ticket was two hundred and eighty dollars; don't you recall that?

A. He may have showed them to me but, if he did, I don't remember it. [83]

Q. You didn't bother to check the ticket against the money that you were getting? A. No, sir.

Q. You were willing to take a bribe but you just relied on the other fellow as to how much you were going to get? A. That is right.

Mr. Kay: That is all.

(Testimony of John Roger Lamb.)

Redirect Examination

By Mr. Baskin:

Q. John, I believe you stated on direct examination that the first bribe was given you on or about August 19, 1950, and, as I remember your cross-examination, you stated it was on the 18th. Now, was it on the 18th or 19th that you received the first one hundred and eighty dollars?

A. Well, on second thought I am pretty sure it was on the 19th because, let's see, that was the day the season closed at six o'clock in the evening; that was on a Saturday if I am not wrong.

Q. August 19th?

A. That is right. Isn't that on a Saturday?

Q. I would like to show you a calendar and have you examine and look at August 19, 1950, and see what day that is on.

A. That is right. It is on the 19th. That is on the evening it closed. [84]

Mr. Kay: I didn't hear the answer.

A. That was on a Saturday, the 19th.

Q. That is the day that he gave you the one hundred and eighty dollars?

A. Yes, as I remember it, and what draws my attention to the fact is that it was the evening the season closed and I figured I would have a day off the following Sunday.

Q. And at that time he paid you only one hundred and eighty dollars; is that your testimony?

A. As far as I know; yes.

(Testimony of John Roger Lamb.)

Q. Now, the money that you received from Joe Patterson on that occasion, did you give it all, or part or all of it to Richard Warner aboard the Chris-Craft?

A. I wadded it up and put it in my watch pocket and presented it to him as I got it.

Q. And that was all the money that Joe Patterson gave you?

A. That is what Richard Warner counted out.

Q. And he counted out one hundred and eighty dollars?

A. That is right.

Q. And then on August 21st, that was a Monday, I believe you stated, and—is that the day that the defendant paid you the one hundred dollars?

A. On the 21st?

Q. Yes. A. Yes. [85]

Mr. Baskin: No further examination.

Mr. Kay: No recross.

(Witness excused)

RICHARD E. WARNER

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your full name?

A. Richard E. Warner.

Q. What is your home? Where are you from?

A. Santa Ana, California.

(Testimony of Richard E. Warner.)

Q. Whom were you employed by during the summer of 1950?

A. Employed by the Fish and Wildlife Service here in Ketchikan.

Q. Is the Fish and Wildlife Service a department of the United States Department of Interior?

A. Yes, it is.

Q. And what was your title or your position with the Fish and Wildlife Service?

A. I was rated a GS 5, enforcement patrolman.

Q. Tell the jury what your duties were in connection with your employment.

A. To patrol the areas that needed the protection from illegal fishing, to enforce all fish and game laws for this [86] area of the country.

Q. Was that for the Territory of Alaska, enforce the laws and regulations conserving fish and game for the Territory of Alaska?

A. Yes; as constituted by the federal acts of the United States.

Q. And what area of the Territory of Alaska were you assigned to patrol or protect from illegal fishing? A. The Boca de Quadra area.

Q. And is that in the Territory of Alaska?

A. Yes, sir, it is.

Q. Did you during the summer of 1950 patrol that area as a Fish and Wildlife agent in conserving fisheries? A. I did.

Q. Will you come down here a minute, Richard, and I want to ask you to examine the blackboard. I show you Government's Exhibit No. 1 and ask

(Testimony of Richard E. Warner.)

you to point out the area which you worked in patrolling and conserving fisheries in 1950 as an agent for the Fish and Wildlife Service.

A. We were concerned with all the Quadra area there. We were concerned with the salmon which congregate at the head of the main arm in Quadra, Quadra Arm and Mink Bay or Mink Arm, principally Mink Arm because the fish school there the earliest and the most during the pink salmon season.

Q. Now, then, is there a creek flowing into Mink Bay or Mink [87] Arm which is known as Humpback Creek? A. Yes.

Q. And the area one statute mile from the mouth of that creek in all directions is closed to commercial fishing for salmon?

A. Yes. It is definitely marked.

Q. You may be seated. Thank you. Mr. Warner, do you know the defendant, Joe Patterson, Joseph C. Patterson, also known as Joe Patterson?

A. Yes, I do.

Q. Is this the defendant sitting over here by his attorney? A. Yes, sir; he is the one.

Q. Did you see him on or about the 14th of August, 1950? A. Yes, I did.

Q. Where did you see him?

A. He was in the vicinity of Orca Point in Boca de Quadra.

Q. Did you have occasion to go aboard his boat at that time?

A. Yes. Eugene Cottrill, another enforcement patrolman, with myself boarded the Rolling Wave

(Testimony of Richard E. Warner.)

on a routine check prior to the opening of the salmon season.

Q. What were you checking for?

A. For any evidence of illegal fishing or other fish and game violations.

Q. At the time who did you see? Did you talk with anybody?

A. Yes. I talked with the skipper of the boat. [88]

Q. Do you know his name?

A. No, I don't.

Q. You just talked with him? A. Yes.

Q. Did you examine the boat then for possible violations?

A. Yes. I identified myself to him as we are required to do.

Q. And how? How did you identify yourself?

A. I introduced myself as Richard Warner of the Fish and Wildlife Service and told him that I wanted to check the boat for any violations.

Q. And did he permit you to do that?

A. Yes, he did.

Q. Did you see the defendant aboard the vessel at the time? A. Yes, sir, I did.

Q. Now, then, did you have an occasion to investigate a possible fishing violation on the part of the defendant Joseph Patterson and a possible bribery violation on his part during this fishing season?

A. Yes, I did.

Q. Who first called that to your attention?

A. I heard about it here in town and instructed

(Testimony of Richard E. Warner.)

John Wendler about it, the enforcement agent who employed me this summer, and then he took it immediately to the District Attorney.

Q. Well, just a minute. Who first—did Lamb tell you about [89] this possible violation?

A. No, he didn't.

Q. Well, did you, in connection with your employment did you see John Roger Lamb on or about the 15th of August, 1950? A. Yes, I did.

Q. Where did you see him?

A. John Lamb?

Q. Yes.

A. I saw him during the day several times there.

Q. What was he doing?

A. He was on board his boat most of the time, anchored in Mink Arm.

Q. And did you talk with him during that day?

A. Yes, I did.

Q. At this point I would like to ask you, are you the captain and skipper of the Fish and Wildlife vessel known as the Chris-Craft? A. Yes, sir.

Q. And you were during the entire season of 1950? A. Yes, I was.

Q. Now, did you talk with Lamb on August 15, 1950?

A. Yes. I had several conversations with him.

Q. Did you have an occasion to see the defendant Joe Patterson on August 15, 1950?

A. Yes, I did. [90]

Q. Where did you see him?

(Testimony of Richard E. Warner.)

A. He was aboard the boat Rolling Wave which was anchored in Mink Arm.

Q. Who was with you when you saw him?

A. John Lamb.

Q. How did you get to the Rolling Wave?

A. We were in John Lamb's skiff, an outboard skiff.

Q. Did you pull up alongside the Rolling Wave?

A. Yes, we did.

Q. About what time of the day was that?

A. Approximately seven-thirty in the evening.

Q. Did you go aboard the vessel the Rolling Wave? A. Yes, we did.

Q. Who went aboard?

A. John Lamb and myself.

Q. And you saw Patterson there at the time?

A. Yes.

Q. Did you and Lamb have a conversation with Joe Patterson? A. Yes, we did.

Q. Where was that?

A. That was aboard the Rolling Wave at the time.

Q. Tell the jury what you said, what John Lamb said, and what the defendant Joseph Patterson said in that conversation.

A. I was introduced to Joseph Patterson at that time. Mr. Patterson—— [91]

Q. Who introduced you?

A. John Lamb did. Joseph Patterson asked John Lamb if I was one of the boys. John Lamb replied, "Yes. He is one of the Fish and Wildlife

(Testimony of Richard E. Warner.)

men. He is skipper of the Chris-Craft, patrolling the Boca de Quadra area with me for the summer here.” And then Mr. Patterson replied—let’s see—“Will he be cut in on this?” And John Lamb replied, “Yes. We are going to split three ways.” And Patterson then said, “There will be enough for everyone.” That is the way he put it.

Q. Did Lamb also say whether or not John D. Wendler had sent you down to patrol in the area?

A. Yes, I believe he did at that time.

Q. Was there any other conversation that you remember?

A. John Lamb explained the signal arrangement briefly to Joseph Patterson, and Mr. Patterson also asked about the fishing prospects at that time.

Q. You mean the fishing prospects where?

A. Within the stream markers in the closed area in Mink Arm.

Q. The closed area of what? What part of the area was he inquiring about?

A. Specifically the mouth of Humpback Creek in Mink Arm.

Q. And you mean within the closed area near the mouth of Humpback Creek of Mink Arm in Boca de Quadra? A. That is right. [92]

Q. Was there any answer or reply to that, do you know?

A. Yes. After Mr. Patterson asked John Lamb how it would be, Lamb replied that he thought it would be unwise to do any fishing at that time because the fish had not schooled up sufficiently to

(Testimony of Richard E. Warner.)

warrant making a set; it wouldn't pay off enough.

Q. Now, after this conversation what did you do?

A. I went back to the Chris-Craft after that.

Q. Did Lamb go to the Chris-Craft with you?

A. Yes; he did for a while.

Q. And you and Lamb went alongside the Rolling Wave in Lamb's skiff; is that correct?

A. That is correct; yes.

Q. And then you went back to the Chris-Craft, and how did you go?

A. We went in the skiff.

Q. With Lamb's skiff from the Rolling Wave back to the Chris-Craft?

A. Yes; that is right.

Q. Now, on or about August 16, 1950, did you have an occasion to see John Wendler, Dan Ralston and Bob Meeks? A. Yes, I did.

A. Yes, I did.

Q. Who is John Wendler?

A. He is the enforcement agent in charge of the Ketchikan area. [93]

Q. Who is Dan Ralston?

A. He is the enforcement supervisor for the entire Alaska area.

Q. Of the Fish and Wildlife Service?

A. Yes, sir.

Q. Tell the jury whether or not at that time you advised John Wendler and Dan Ralston of the facts as you knew them as of that time regarding a possible bribery or illegal fishing violation?

(Testimony of Richard E. Warner.)

A. Yes, sir, I did that. At that time I turned over what I had.

The Court: Well, when you say, "I turned over what I had," do you mean information or money?

A. Oh. I submitted as detailed a report as I could. I had written it up for him, explaining what I had found and what had happened at that time.

Q. That was with regard to the possible illegal fishing and the possible bribery which was to come later; is that correct? A. That is correct.

Mr. Kay: What day was this?

Mr. Baskin: August 16, 1950.

Mr. Kay: Thank you, Mr. Baskin.

The Court: Where was Wendler when you told him about this? [94]

A. They arrived—it was at the head of Mink Arm—in a Widgeon airplane owned by the Fish and Wildlife Service.

The Court: Did they happen to arrive there, or did they receive advance information and is that why they came? A. No. They just arrived.

Q. And that is where Dan Ralston was; he was also there near Mink Arm when you advised them of the information you had; is that right?

A. Yes.

Q. Now, on or about the 18th of August, 1950, tell the jury whether or not you were aboard the Chris-Craft and anchored in the vicinity of Cygnet Island, Boca de Quadra?

A. I was at that time; yes.

Q. Who was with you?

(Testimony of Richard E. Warner.)

A. Eugene Cottrill, another enforcement patrolman, and myself were there.

Q. Was John Lamb with you?

A. Part of that time he was; yes.

Q. What time was that, do you know, or about what time it was?

A. John Lamb came aboard in the course of the evening.

Q. Did you talk with John Lamb aboard your vessel that evening? A. Yes, we did.

Q. Did he advise you whether or not the Rolling Wave was to [95] make a set that same evening?

A. Yes, sir, he did.

Q. That he was going to fish illegally on the evening of the 18th?

A. Yes; those arrangements had been made.

Q. Now, then, did you see or hear or know whether or not a vessel passed by Cygnet Island and went into the vicinity of Mink Arm on the evening of August 18, 1950?

A. Yes. At about nine-thirty p.m. that night, I believe it was, we heard a boat, unidentifiable because of the darkness, go into the Mink Arm area, and a few minutes later we felt the swells rocking our boat as the unidentified boat passed us.

Q. Was Lamb with you at that time?

A. Yes; he was.

Q. After the boat passed by, what did Lamb do?

A. Lamb remarked, as we heard this boat come into the area, to the extent that, "Well, there goes the Rolling Wave in to make a set."

(Testimony of Richard E. Warner.)

Q. And what did he do after he said that?

A. Shortly thereafter he left us, saying that he was going to go up and see how things were coming, referring to the illegal set being made by this boat.

Q. And then did he go up into the area of Mink Arm or Mink Bay? [96]

A. Yes. He took his skiff and went up that way.

Q. Did you see John Lamb any more that evening, that is the evening of the 18th?

A. No, we did not.

Q. And at the time he left you and Cottrill were aboard the Chris-Craft anchored in the vicinity of Cygnet Island?

A. Cygnet, yes; that is right.

Q. On or about the 19th of August, 1950, did you have an occasion to see John Wendler?

A. Yes; we did at that time.

Q. That was on the 19th?

A. On the 19th; yes.

Q. Did you tell him whether or not a bribe had been paid to John Lamb as of that time?

A. When he arrived we told him that no money had changed hands to our knowledge.

Q. That was on the 19th? A. Yes.

Q. And what time of the day was that?

A. It was approximately, I think it was about four-thirty in the afternoon.

Q. Now, then, at any time after that did you have an occasion to see John Lamb?

A. Later that night he came aboard our vessel.

Q. Where were you when he came aboard the vessel? [97]

(Testimony of Richard E. Warner.)

A. Eugene Cottrill and myself were inside sitting at the table reading.

Q. Inside the Chris-Craft? A. Yes.

Q. Where were you anchored?

A. We were anchored by Cygnet Island in Mink Arm.

Q. What did he do and say to you when he came aboard?

A. Immediately when he came aboard he pulled out a roll of bills or several bills, laid them on the drainboard, and said, "Here they are, Skipper. You count them," referring to the money that he had put on the drainboard.

Q. And did he put money on the drainboard?

A. Yes, he did. He laid one hundred and eighty dollars there on the sink.

Q. Was that money used by the United States Government? Was that money of the United States of America?

A. Oh, yes; it was American bills.

Q. What was it? In coins, silver or in paper bills? A. It was in paper bills.

Q. What did he say to you when he gave that money to you?

A. After he told me to divide the money, he made remarks to the effect that we could depend upon Joe Patterson, that he wouldn't let us down as far as paying off for any illegal fishing that he had done.

Q. Now, he handed you one hundred and eighty dollars. What [98] did you do with that?

A. I divided it into three piles.

(Testimony of Richard E. Warner.)

Q. What—did you give him any of it?

A. Yes. John Lamb took sixty dollars of that money and pocketed it.

Q. What did you do with the other one hundred and twenty?

A. I put it in a personal envelope, an airmail envelope of my own, sealed it and put it in my personal effects.

Q. Did you retain possession then of the one hundred and twenty dollars?

A. Until the next evening when one of our patrol boats came into the area, and at that time I turned it over to another enforcement agent.

Q. Mr. Warner, I show you an airmail—just a minute.

Mr. Baskin: I would like to have this marked for identification, one airmail envelope containing one hundred and twenty dollars.

The Court: Do you intend to introduce it by this witness?

Mr. Baskin: Yes, I do, your Honor.

The Court: Then it is not necessary to mark it for identification.

Mr. Baskin: Very well. Thank you.

Q. I show you an envelope, an airmail envelope. I ask you to examine that and tell the jury what it is. [99]

A. It is either the same or an identical airmail envelope in which I put one hundred and twenty dollars, the bribery money.

Q. That is the one hundred and twenty dollars,

(Testimony of Richard E. Warner.)

a part of the one hundred and eighty that John Lamb gave you on or about the 19th of August, 1950?

A. Yes, sir.

Q. And you put the money in an envelope similar to that one?

A. Yes. Identical.

Q. And what did you do with that envelope containing the one hundred and twenty dollars that you put in there?

A. Immediately after putting the one hundred and twenty dollars in I sealed the envelope and put it with my personal effects where I would be sure to have it.

Q. And then what did you do? Did you retain possession of it?

A. Yes; as I say, until the next evening when a Fish and Wildlife patrol boat came in and I turned the envelope containing the money over to another one of our agents.

Q. Who did you give it to?

A. To Charles Graham.

Q. Is he an agent of the Fish and Wildlife Service?

A. Yes, he is.

Q. And what day did you give it to him?

A. That was August 20th. [100]

Q. Is this the only envelope—was that the only envelope that you gave Charles Graham?

A. Yes, sir.

Q. Containing money? Was it the only airmail envelope that you gave him on that day or any other day?

A. Yes; the only one of any kind.

Mr. Baskin: Your Honor, I am sorry I might

(Testimony of Richard E. Warner.)

have been mistaken. Your Honor, I offer this envelope containing one hundred and twenty dollars in evidence.

The Court: Well, in view of the stipulation I suppose there is no objection?

Mr. Kay: I won't even ask to look at it, your Honor. No objection.

The Court: It may be admitted and marked.

Mr. Kay: I take it it is one hundred and twenty rather than one hundred and eighty; is that what you said?

Q. I ask you to examine the envelope and the money and count that and tell the jury what it is.

A. There are six twenty-dollar bills American currency.

Q. And is that one hundred and twenty dollars in American money? A. Yes, it is.

Mr. Baskin: Very well. We offer it in evidence, your Honor.

Clerk of Court: The exhibit has been marked Plaintiff's [101] Exhibit No. 2.

Q. Now, tell the jury whether or not John Roger Lamb gave you any other money while you were patrolling the area for the Fish and Wildlife Service during the fishing season of 1950?

A. No, he did not. There was no more money exchanged.

Mr. Baskin: You may cross-examine the witness. Oh, I would like to ask the witness one other question if you don't mind, sir?

Mr. Kay: No, not at all.

(Testimony of Richard E. Warner.)

Q. At the time John Roger Lamb gave you that one hundred and eighty dollars, who else was present? A. Eugene Cottrill.

Q. He was aboard the vessel?

A. Aboard the Chris-Craft.

Q. And he is also an agent of the Fish and Wildlife Service? A. That is right.

Q. Did he see John Roger Lamb give you the money? A. Yes, he did.

Q. And did he watch you count it out?

A. Yes.

Q. And divide it? A. Yes.

Q. And retain possession of it?

A. That is correct. [102]

Mr. Baskin: You may examine the witness.

Cross-Examination

By Mr. Kay:

Q. Richard, were you employed by the Fish and Wildlife the 1949 season?

A. No, sir, I was not.

Q. This is your first year?

A. That is correct.

Q. You started to say something about that you had heard something about this before you went out there this year. What was it you were going to say there, Richard. The United States Attorney cut you off a little there.

Mr. Baskin: Well, your Honor, he can ask the witness a direct question as to what he wants to know.

(Testimony of Richard E. Warner.)

Mr. Kay: I am asking the direct question—what was it he was going to say?

Mr. Baskin: Well, the witness can only answer, your Honor, in answer to questions that are asked. It should be that way so we can know whether or not it is material or irrelevant to the issues.

The Court: Well, it is impossible to tell of course what the answer will be, but the objection is overruled.

Q. You may answer, Richard.

A. I had heard reports to the effect that John Lamb had sold [103] fish in the Quadra area.

Q. Last year? In the 1949 season?

A. Yes, in the 1949 and in the 1950 season.

Mr. Baskin: Your Honor, I object to that as hearsay.

Q. You heard that he had been soliciting people, to take bribes, to come out there and fish, hadn't you? A. No, sir, I did not.

Q. Just heard that he had been selling fish?

A. Yes.

Q. And you heard that here in Ketchikan before you went out? A. Yes, sir.

Q. When did you go out to the Boca de Quadra this year? A. On August 12th.

Q. August 12th? A. Yes.

Q. John Lamb had already been out there for some time, had he not? A. Yes, sir.

Q. And is that the same time that Cottrill went out, with you?

(Testimony of Richard E. Warner.)

A. Yes. He accompanied me when we went out.

Q. And did you leave from here on the Chris-Craft, or did you pick up the Chris-Craft out there after you got there?

A. No. We left from the Fish and Wildlife Dock here in Ketchikan.

Q. And proceeded on the Chris-Craft out to the Boca de Quadra [104] area?

A. That is correct.

Q. You of course contacted John Roger Lamb as soon as you got into the area, did you not?

A. Yes. We had groceries for him.

Q. You went over to see him the first day you got in there, on the 12th?

A. We anchored beside him that night.

Q. I see. Did you have any conversations with John Roger Lamb on that time, about August 12th, about, oh, anything that would lead him to believe that you might go along with him on the scheme to sell fish?

A. No. It was mere generalities. I did not know the man at all before we went out there and I got acquainted with him.

Q. But you had sort of thought in your mind, as a good law enforcement officer, that you were going to catch John Roger Lamb if you could, hadn't you?

A. If John Roger Lamb proved himself to be unlawful, then he would be arrested.

Q. That is right. You had that intention when you went out there, did you not?

(Testimony of Richard E. Warner.)

A. Not particularly to arrest him, just if the situation warranted it.

Q. You had talked it over with some of your superiors in the Fish and Wildlife before you left town, had you not? [105]

A. That is correct.

Q. And with the United States Attorney's Office?

A. Yes, sir.

Q. And representatives of the Federal Bureau of Investigation?

A. Yes, sir.

Q. And so the intention was that if John Roger Lamb proved susceptible to taking a bribe he was to be arrested—trapped, you might say?

A. No, sir; I couldn't say that. I went out there with the intention of patrolling the Quadra area and, if the situation warranted arresting of John Roger Lamb, not on suspicion or anything else, but if he proved himself to be unlawful, then he would be arrested.

Q. And that was understood by your superiors in the Fish and Wildlife Service and by the representatives of the United States Attorney's Office?

A. Yes.

Q. When is the first occasion on which you ever met Joseph C. Patterson? August 14th?

A. The evening of August 14th.

Q. Had you ever heard of Joseph Patterson prior to that time, Richard?

A. I had heard of him; yes.

Q. Ever heard of him as a fisherman?

A. No, I hadn't. [106]

(Testimony of Richard E. Warner.)

Q. In fact he had never fished before this season, had he?

A. I couldn't say that. I am a stranger here.

Q. You had heard of Joe Patterson, but you had never heard of him as a fisherman?

A. That is right. Well, yes; I have heard of a lot of people here in town, but not as fishermen.

Q. Did you even know that Joe Patterson owned a boat up till that time you went aboard?

A. I would hesitate to say on that because, as I say, I found out definitely later on that, and I wouldn't recall for sure when I did first find out about it.

Q. Well, to the best of your recollection on August 14th when you went aboard Joe Patterson's boat that was just a routine thing, wasn't it, to board his boat?

A. Yes. I didn't recognize the boat until we were already there.

Q. At that time you had no suspicion of Joe Patterson, had you, in particular? That is, on August 14th, the first day when you went aboard the boat to look for the doe you told him you wanted to check the icebox?

A. Yes; I checked that boat the same as any other seine boat in the area.

Q. You had no particular suspicion of Joe Patterson in connection with any attempt to bribe Lamb at that time, had you, on August 14th when you went aboard? [107]

(Testimony of Richard E. Warner.)

A. I had heard that the Rolling Wave had committed violations in times past, but I didn't know.

Q. Did you know that the Rolling Wave, that this was August 14th which would have been the day the Rolling Wave fished for anything, did you know that—I mean, while it was owned by Joseph C. Patterson?

A. Would you repeat that? I didn't quite follow you.

Q. The question was whether or not you knew that the Rolling Wave, while it was owned by Joseph C. Patterson, had never fished; Joe had never fished with it? A. I knew nothing like that.

Q. I see. It could be that you had heard of the Rolling Wave being engaged in illegal fishing some other season?

A. No. My suspect of any seine boat would be the same as any other law enforcement officer. It is our duty to check any boat in an area that might have fish in it.

Q. So you were checking the Rolling Wave just the same as any other seine boat coming into the area on that day? A. That is right.

Q. And you told him you were looking for a doe and wanted to look around the boat?

A. No. I said I was making a routine preseason check.

Q. They were friendly, were they not?

A. The skipper allowed me to look over his vessel. I can say that much. He was neither friendly nor extremely gruff. [108]

(Testimony of Richard E. Warner.)

Q. Mr. Patterson himself was friendly, was he not? Do you recall a conversation about his .375 rifle, a .375 Magnum, and he let you take a shot with it; do you recall that, Richard?

A. No, sir; that conversation took place approximately two months later.

Q. Two months later?

A. Yes, or maybe a month and a half. That particular conversation you are referring to there took place entirely after the salmon season was over and after these alleged violations had taken place.

Q. You are sure of that? It didn't occur on this occasion? A. Positively.

Q. Was there anything unusual about the check? Did you find any evidence of any violation of any Fish and Wildlife rules or regulations on August 14th? A. No, I did not.

Q. So you left the boat at that time, and there were no further comments or investigations; is that right? A. That is right; yes.

Q. Now, I believe you said that you and Lamb went aboard the boat on August 15th, again boarded the Rolling Wave; is that right?

A. August 15th was the first time Lamb and I boarded the Rolling Wave together. [109]

Q. And I didn't recall whether you said about what time of day that was that you boarded the boat on the 15th?

A. I believe it was approximately seven-thirty that evening.

Q. Seven-thirty the evening of August 15th?

(Testimony of Richard E. Warner.)

A. Yes.

Q. Had the Rolling Wave been in the area during that day or had they gone out somewhere else? Did you observe the boat there in the area that day?

A. Not specifically. I believe earlier that evening I remember seeing it there.

Q. It came in that evening, did it not?

A. Sometime during the day; I couldn't say when.

Q. And you say that you and Lamb went aboard the boat and had a conversation concerning the fact that you would be cut in on any illegal payments that were made? A. Yes.

Q. And I believe you said that Lamb advised Patterson not to go in and fish that evening because the fish were not schooled up, or words to that effect?

A. Yes; after Mr. Patterson asked him.

Q. Could it be that Lamb said that the reason was that there were too many other boats around?

A. There was—not on that particular night, I don't believe. It could have been; yes.

Q. He could have said that? [110]

A. Yes.

Q. Possibly did, and possibly didn't. Well, now, between August—between the time on August 14th when you went aboard the Rolling Wave and the evening of August 15th when you went aboard the Rolling Wave had you entered into some agreement with John Roger Lamb concerning the taking of illegal fish in Boca de Quadra and splitting of a bribe for that purpose?

(Testimony of Richard E. Warner.)

A. On the evening of August 13th.

Q. August 13th? A. Yes.

Q. That is the day before you boarded the Rolling Wave? A. Yes.

Q. And on the evening of August 13th you and Lamb had arrived at a definite deal; is that right? You had given Lamb to understand that if he made some arrangements you would go along with him?

A. I didn't promise Lamb I would do anything. I didn't want to lead the man on in any way, was my object there.

Q. In other words, Lamb propositioned you as to whether or not you would go along, and you didn't say yes or didn't say no, is that right?

A. That is correct.

Q. But more or less gave him to understand that if he could make such a deal you would go along? Your purpose was to [111] catch him if he went ahead and did it in violation of the law, was it not?

A. That is correct.

Q. So you gave him to understand that if he took this money you would possibly take your share of it to let this illegal fishing occur? A. Yes.

Q. And that was on the evening of August 13th?

A. Yes; August 13th.

Q. Now, you say that on August 16, 1950, John Wendler, Dan Ralston, and was there somebody else aboard the plane? A. Bob Meeks.

Q. Bob Meeks—flew in and landed at, was it the mouth of Mink Arm? A. That is right.

Q. And that you went aboard the plane, or they

(Testimony of Richard E. Warner.)

came aboard your Chris-Craft—I don't know which it was—and you gave John Wendler a full report on what evidence you had to date?

A. Correct.

Q. I believe you said they flew in on that particular date, and Mr. Wendler had advice on this of John Lamb? A. Yes.

Q. And possibly to see whether or not you had found out anything with regard to John Lamb's activities? [112] A. Yes.

Q. That was the purpose?

A. He had other things to do than to check on that.

Q. But his purpose in landing there and talking to you was to talk over the Lamb situation?

A. Yes.

Q. And you did talk over the Lamb situation and you told him at that time that you had made a deal or that Lamb had propositioned you in regard to making a deal on the evening of August 13th?

A. That is right.

Q. Any mention made of Joe Patterson at that time or the Rolling Wave? A. Yes, there was.

Q. What was that?

A. Let's see. This was the morning of the 16th?

Q. I don't know when it was. You said the 16th.

A. Yes. At that time, let's see, Lamb had told me that Patterson had asked or had made arrangements with Lamb to make a set on the 17th if the situation was favorable at that time. And included

(Testimony of Richard E. Warner.)

in my other information to John Wendler was that, I believe.

Q. Included in your information of course would be information concerning your visit to the Rolling Wave on the 15th with Lamb when this conversation was had on that day? [113] A. Yes.

Q. And that was included in your report to John Wendler? A. Yes.

Q. Up to that time the Rolling Wave, so far as you know, had committed no violation of the fishing laws? A. No, not at that time.

Q. There had been no illegal fishing, no illegal set? A. Not so far as I knew.

Q. Or payment of any bribe?

A. Not that I knew of.

Q. As far as you knew?

A. Not that I knew of.

Q. And what did Mr. Wendler tell you; do you recall? Just to go ahead and see what happened; is that about it? A. Yes; to that extent.

Q. Keep your eyes open and see what happened?

A. Yes.

Q. Of course he advised you to let him know immediately if any money changed hands, did he not?

A. No; he did not say that because we had no means of contact.

Q. But it was understood that you would contact him as soon as you had something definite? Did you make any plans for him or any other agents of the Fish and Wildlife Service to observe any illegal sets that might be made?

(Testimony of Richard E. Warner.)

A. There was nothing definite that I knew about at that time. [114]

Q. You didn't know about Charles Graham being in the area at that time?

A. Not to observe any illegal fishing; no.

Q. And then on August 19th, I believe you said, you saw John Wendler again?

A. Yes; that is right.

Q. Did he fly into the area on that occasion?

A. Yes, he did.

Q. And you again had a conversation with him about the situation?

A. A very short conversation.

Q. That was on the morning of August 19th, was it, Richard?

A. No. It was on the evening of August 19th.

Q. Well, what time in the evening; do you recall?

A. I believe it was about four-thirty in the afternoon.

Q. Well, at that time you reported to Mr. Wendler that no money had changed hands to your knowledge?

A. Yes.

Q. But you of course informed him that an illegal set had been made, or did he tell you that? He knew that there had been illegal fishing by that time, did he not?

A. I told Mr. Wendler that we had evidence to believe that the Rolling Wave had gone in.

Q. Did he indicate that he knew that?

A. Yes. [115]

Q. He told you they had the dope on that? And

(Testimony of Richard E. Warner.)

so then I suppose he told you to wait until the money changed hands and let him know, or words to that effect?

A. Yes—well, no. He said he would contact us to that effect there.

Q. And later that evening Lamb came aboard and tossed down the money, and the split was made?

A. That is right.

Q. Were you Lamb's superior officer, or were you all on more or less the same level as far as your services go?

A. Working down there you mean?

Q. Yes.

A. No. It was a situation where we worked together.

Q. I see. You weren't his commander or superior officer?

A. Oh, no; not by any means.

Q. Who would be your immediate superior in the Fish and Wildlife Service?

A. John Wendler.

Q. Do you happen to know what his title is?

A. He is entitled enforcement agent.

Q. Enforcement agent of the Ketchikan area?

A. Yes.

Mr. Kay: That is all.

Mr. Baskin: Just a moment, Richard. [116]

Redirect Examination

By Mr. Baskin:

Q. For the record will you state whether or not Mink Bay is also known as Mink Arm?

(Testimony of Richard E. Warner.)

A. Yes, it is. They are one and the same.

Q. And they are a part of the Boca de Quadra area; is that right? A. Yes.

Q. Now, counsel asked you if at the time you went out there you had in mind possibly arresting John Roger Lamb for a violation of the law. Did you also have in mind investigating and apprehension or leading to the apprehension of any person who gave him money in order to fish in that area?

A. Yes, we did.

Q. In other words, you had a dual purpose to also investigate fishing violations, a possible bribery of a Government official, and to arrest or cause the arrest of these persons; is that correct?

A. That is entirely correct; yes.

Q. And one of those—of the intent to do that was just as equal to catching Mr. Lamb, isn't that correct? A. Yes; definitely so.

Q. Now, counsel asked you about a deal that, I believe he phrased it, that you made with Lamb. Now, isn't it true [117] that you didn't make any kind of deal direct with Lamb regarding any illegal fishing or a bribery of a Federal official, Government officer?

A. It would be much more correct to say that it was not a deal. He approached me, I could say that.

Q. But you didn't encourage him to do that, did you? A. No, I didn't.

Q. Or whatever he said to you with regard to a possible bribery or illegal fishing by other persons,

(Testimony of Richard E. Warner.)

was that his own idea so far as you are concerned?

A. Entirely; yes.

Q. It wasn't your idea to encourage or entice him to make a deal where other persons could fish illegally, was it? A. No.

Q. Or to pay him money and get by with it?

A. No. It was his initiative.

Mr. Baskin: No further examination.

Recross-Examination

By Mr. Kay:

Q. A few questions, Richard. You didn't do anything to give Lamb the idea that you would not go along, did you, Richard? Your idea was to make him think that you were fixed, that you were O.K.?

A. Specifically what I did in that case, when Lamb approached [118] me with something, with some ideas, I deliberately did not encourage him in any way.

Q. I am not suggesting that you did.

A. I realize that. But if he would ask me something I would, you might say, counter it with some questions regarding it so that I did not commit myself in any way to him.

Q. You gave him to understand that it would be O.K., did you not? You certainly didn't inform him that you were going to pinch him if he went ahead and took the bribe, did you, Richard?

A. No. It was to the extent that Lamb had the initiative. Lamb was doing things.

Q. Well, you just let him go ahead and do it,

(Testimony of Richard E. Warner.)

thinking that you were O.K. and would go along?

A. Yes. Lamb made his own assumptions in that case.

Q. And when you were aboard the boat on August 15th with Lamb, aboard the Rolling Wave on August 15th, do you recall you testified, did you not, on direct examination that Joe inquired of Lamb, "Will he be cut in on this?" meaning you, and that Lamb replied, "Yes." Do you remember that?

A. Yes.

Q. And that did occur? A. Yes.

Q. And you didn't make any attempt to discourage the idea in [119] Joe Patterson's mind that you were going along with Lamb?

A. No. Lamb was doing the talking in that case.

Q. And you were just nodding your head, sort of? A. I took it in. I listened.

Q. You did nothing to give Joe Patterson the idea that you were not in the fix, did you. Otherwise it would never have occurred, would it?

A. Would you repeat that last part?

Q. I said you did nothing to give Joe Patterson the idea on August 15th when you were aboard the Rolling Wave with Lamb that you were not in on the fix? You just stood there?

A. Mr. Patterson knew directly that I was a Federal enforcement officer, and what he did was his own idea.

Q. And this conversation in which Patterson asked Lamb if you were in on the fix and Lamb said,

(Testimony of Richard E. Warner.)

“Yes,” occurred in your presence on the Rolling Wave, did it not? A. That is right.

Q. You did not at that time inform Joe Patterson that you were not in the fix but you were going to pinch whoever you caught, did you?

A. No, I didn't.

Q. Oh, yes; one other question. I perhaps should have asked this on cross-examination. I overlooked it. About when was it, the best that you can recall, Richard, when you [120] first heard talk about John Roger Lamb having sold fish?

The Court: Never mind answering that question. I am going to have all that testimony as to what this witness heard about the witness Lamb selling fish in Boca de Quadra, stricken, and the jury is instructed to disregard it entirely.

Mr. Kay: May I ask the reason for the Court's ruling in that regard, sir?

The Court: It might have been competent on the trial of Lamb, but not here.

Mr. Kay: Well, isn't it competent in regard to the showing of whether or not Lamb was doing the soliciting to this illegal——

The Court: It is based on hearsay, and furthermore it is entirely out of order. After the defendant or his witnesses have testified, then this witness might be recalled for something of that kind, but at this stage of the trial it is absolutely out of order.

Mr. Kay: Well, but if I had to recall the witness—not to argue with the Court, sir—but if I had to recall the witness, wouldn't I have to make the wit-

(Testimony of Richard E. Warner.)

ness my own on recalling him at some later point in the trial for further cross-examination?

The Court: You would have to make the witness your own; yes; just as is true in the case of establishing any affirmative defense. [121]

Mr. Kay: I think that is sufficient, your Honor.

The Court: Anything further?

Mr. Baskin: No further examination, your Honor.

(Witness excused.)

Whereupon Court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:

Mr. Kay: Your Honor, may I be heard? I would like to check the Court's attitude in striking the testimony.

The Court: Well, do you think the argument you are about to make is a proper one in the presence of the jury?

Mr. Kay: It will only take a minute, and I am sure there is nothing improper. All I want to say in that regard was that it seems to me that the testimony elicited on cross-examination, that part of the cross-examination, was properly within the scope of cross-examination and within the direct, that it was relevant, competent and material, and in order to show the entire pattern of the entrapment.

The Court: Well, what about it being hearsay, what he heard?

Mr. Kay: I don't see that the hearsay question enters into it because it is testimony that can't be elicited in any other fashion. Certainly proof of a rumor, a suspicion, is sufficient to—in these entrapment cases you will find that [122] they start off with rumor, a suspicion.

The Court: Against the defendant. But not against the witness.

Mr. Kay: But here we have a case based on the theory of entrapment, a double entrapment, as the Government has indicated. Entrapment not only—

The Court: You can't consider the entrapment, if it could be labeled as such, of Lamb. Lamb isn't on trial, and of course it is extremely doubtful—there isn't anything in the evidence that would justify a statement that he also was entrapped.

Mr. Kay: Well, I mean—he was not trapped; he was trapped, but not entrapped, in that the intention evidently originated with him, so far as the other Fish and Wildlife people go, but resulted in the entrapment of the defendant, and the whole scheme resulted in his entrapment.

The Court: Well, now, let's take a look at it this way. Suppose that on your defense you attempted to call a witness who would testify that he heard that the witness Lamb here would take a bribe.

Mr. Kay: It would be relevant, your Honor.

The Court: And it is hearsay, and it is hearsay as it came from the lips of the witness here.

Mr. Kay: I agree with that. If the Court meant only to strike the portion relative to what he heard from [123] other people—

The Court: That is all I have done.

Mr. Kay: I thought you also struck the testimony regarding the conversation with Wendler and plans which were made to go out and go ahead. If you didn't strike that——

The Court: All that was stricken from the consideration of the jury, as the reporter's notes will show, is the witness' testimony as to what he heard concerning Lamb selling fish.

Mr. Kay: I apologize, and for taking the time of the Court.

The Court: Call your next witness.

EUGENE WAYNE COTTRILL

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your full name?

A. Eugene Wayne Cottrill.

Q. Where do you live, Eugene?

A. I live in Clear Lake, Iowa.

Q. Is that your home? A. Yes, it is.

Q. Are you a student, or something?

A. Yes, I am a student there. [124]

Q. Were you employed during the summer of 1950 in the Territory of Alaska?

A. Yes, I was.

Q. Who were you employed by?

A. Employed by the Fish and Wildlife.

Q. Is that the Fish and Wildlife Service?

(Testimony of Eugene Wayne Cottrill.)

A. Yes; that is right.

Q. And what was your position; what was your title as an employee?

A. I was an enforcement patrolman.

Q. And were you employed for the Fish and Wildlife from about July 6, 1950, to, or through August, 1950?

A. That is right.

Q. What area of Alaska did you work while so employed?

A. I was in Boca de Quadra patrolling.

Q. What was the purpose of being in Boca de Quadra?

A. We were—I was there to enforce the game and fishery laws.

Q. And regulations for the conservation of fish?

A. That is right.

A. And game? A. And game.

Q. When did you go to Quadra?

A. We left Ketchikan on August 12th.

Q. 1950? A. 1950. [125]

Q. How did you go out there?

A. We went by Fish and Wildlife patrol boat, the Chris-Craft.

Q. Who do you mean when you say, "We"?

A. Richard Warner and I.

Q. Did both of you work on the Chris-Craft?

A. Yes, we did.

Q. And you arrived at Boca de Quadra about August 12th, 1950?

A. That is right.

Q. And from that time on during the commercial fishing season of 1950 did you patrol that area to

(Testimony of Eugene Wayne Cottrill.)

prevent illegal fishing? A. That is correct.

Q. While out there on or about the 12th of August did—strike that question please. On or about the 14th of August, 1950, did you have an occasion to see the vessel *Rolling Wave*?

A. What date was that?

Q. August 14, 1950?

A. On August 14th, yes, I did.

Q. Where was the vessel?

A. As I remember, it was somewhere between Mink Bay and Kite Island.

Q. And who was with you when you saw it?

A. Richard Warner.

Q. Did you or Richard Warner board the *Rolling Wave*? [126]

A. Yes. Richard Warner boarded it, and I stayed aboard the *Chris-Craft*. We were tied up alongside.

Q. Now, on or about the 18th of August, 1950, were you anchored in the vicinity of *Cygnat Island* near Mink Bay? A. Yes, we were.

Q. Who was there?

A. Richard Warner and I.

Q. And yourself? A. Yes.

Q. Anybody else?

A. John Lamb was there during the day part of the time and during the evening.

Q. And on that evening while you were anchored there, do you know whether or not a boat passed by and went into the area of Mink Bay?

A. We heard a boat proceeding in the direction of *Humpback Creek*.

(Testimony of Eugene Wayne Cottrill.)

Q. And who was with you when you heard that boat?

A. Richard Warner and John Lamb and I were together on the Chris-Craft.

Q. Did John Lamb say anything?

A. Oh, he just nodded and said, "There he goes."

Q. Did he say who it was?

A. He inferred that it was the Rolling Wave, that is the boat that we were working with or dealing with. [127]

Q. After the boat went by and into Mink Bay did Lamb stay aboard the Chris-Craft?

A. No, he didn't.

Q. What did he do?

A. He left the Chris-Craft shortly after.

Q. Do you know where he went?

A. Yes. He went to the head of Mink Arm to Humpback Creek.

Q. Did you see him any more that evening?

A. No, we didn't. We didn't see him.

Q. When was the next time you saw John Roger Lamb?

A. It was the next morning about the middle of the morning.

Q. Did you talk with him? A. Yes, we did.

Q. What did he say to you?

Mr. Kay: I am going to object to that.

Mr. Baskin: Very well. I will withdraw the question.

Q. Did you see John Roger Lamb on the evening or in the afternoon of the 19th of August, 1950?

(Testimony of Eugene Wayne Cottrill.)

A. In the afternoon?

Q. Yes. A. Yes, we did.

Q. Where were you when you saw him?

A. We were anchored there just off Cygnet Island in Mink Bay.

Q. What were you in or on at the time? [128]

A. We were on the Fish and Wildlife Chris-Craft.

Q. Where was John Lamb when you saw him?

A. Well, he was, I believe he was on the Chris-Craft with us at the time, in his skiff.

Q. Did he reach the Chris-Craft by coming to the Chris-Craft in his skiff or something?

A. Yes.

Q. Did he come aboard the Chris-Craft?

A. Well, this was later in the evening. He came aboard the Chris-Craft later in the evening.

Q. Then he was there twice? Is that what you said? A. Yes.

Q. When was he there the first time?

A. Earlier in the afternoon.

Q. When he came there the first time, did he show you any money?

A. No, he didn't; not the first time.

Q. Did he see you a second time on August 19, 1950? A. Yes, he did.

Q. And with reference to that time, did he show you any money? A. Yes, he did.

Q. Tell the jury, as you remember, just what he did and said there when he came aboard the Chris-Craft.

(Testimony of Eugene Wayne Cottrill.)

A. Well, about, oh, seven-thirty in the evening John Lamb boarded the Chris-Craft and laid a roll of bills on the [129] sink of our Chris-Craft, and he looked at Richard Warner and said, "Go ahead, Skipper, and split it up," and Richard Warner proceeded to divide the money into three separate piles.

Q. How much money did John Roger Lamb put on the table?

A. There was one hundred and eighty dollars.

Q. Did you see Richard Warner count the one hundred and eighty dollars? A. Yes, I did.

Q. What did Warner do with the money?

A. Well, he took our two shares, that would be one hundred and twenty, and he put it in an envelope, an airmail envelope.

Q. Your two shares? Would that be sixty dollars for each of you; is that what it was? A. Yes.

Q. And he put that one hundred and twenty in an envelope? A. Yes.

Q. Did he retain possession of that one hundred and twenty dollars?

A. Yes; he did, throughout the day.

Q. And what did he do with the other sixty dollars? A. Well, John Lamb took that.

Q. Did John Lamb keep that one hundred and sixty dollars? I say, did John Lamb keep that one hundred and sixty dollars?

I mean, sixty dollars? Excuse me. [130]

A. Yes, he did.

Q. Now, after John Lamb took his sixty dollars, did he stay aboard the vessel, or what did he do?

(Testimony of Eugene Wayne Cottrill.)

A. No. He left. Very shortly after that he left.

Mr. Baskin: You may examine the witness.

Cross-Examination

By Mr. Kay:

Q. Eugene, do you remember, or were you aboard the Rolling Wave on August 15th, that would be the day after the first time you went aboard? A. August 15th?

Q. Yes. A. No, I was not.

Q. You weren't aboard on that occasion when Lamb and Warner boarded the boat on the 15th?

A. No, I was not.

Q. Were you ever present on any occasion when, in the presence of Joe Patterson, when Lamb indicated that you and Warner had been fixed to go along on this deal?

A. No. I didn't see Joe Patterson at all out there.

Q. Prior to going out there this season—strike that.

Mr. Kay: That is all the questions. No further questions.

Mr. Baskin: No further examination.

(Witness excused.)

CHARLES EDWARD GRAHAM

called as a witness on behalf of the Government,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your full name?

A. Charles Edward Graham.

Q. Where do you live, Charles?

A. Ketchikan.

Q. Were you employed during the summer of 1950?

A. Yes, I was.

Q. Who were you employed by?

A. Fish and Wildlife Service.

Q. What—are you still employed by the Fish and Wildlife Service?

A. Yes, I am.

Q. And were you employed between from about June, 1950, through August or through September, 1950? [131]

A. Yes, I was.

Q. Did you have an occasion, calling your attention to on or about August 17, 1950, did you have an occasion to go to Mink Bay, also known as Mink Arm?

A. Yes, I did.

Q. And tell—who went with you?

A. Robert O. Halstead.

Q. Were you at Mink Bay on or about August 18, 1950?

A. Yes, I was.

Q. And in what part of that bay were you?

A. I was on the west bank of Humpback Creek.

Q. And does Humpback Creek flow into Mink Bay?

A. Yes, it does.

(Testimony of Charles Edward Graham.)

Q. Were you on the beach there or at the edge of the beach? A. Yes.

Q. Who was with you?

A. Robert O. Halstead and John Wendler.

Q. And what were you doing there?

A. We were patrolling the creek for a possible fisheries violation.

Q. On that occasion did you see a vessel?

A. Yes, we did.

Q. In that area? A. Yes.

Q. What vessel was it? [132]

A. The Rolling Wave.

Q. Where was that Rolling Wave? Where did you see it? A. At the mouth of the stream.

Q. Was it within the area closed to commercial fishing?

A. Yes. It was inside the area closed to commercial fishing.

Q. And tell the jury just what the Rolling Wave did. What did it do while it was in that closed area?

A. They proceeded to make a set and had sort of a hard time of it for a while. They became entangled or something. However, they got their net back aboard and started all over again and made a set, completed it, brailed and left.

A. And they completed a set; and did they catch fish? A. Yes, they did.

Q. Now, on that occasion did you hear or see an outboard boat arrive at the scene of that fishing?

A. Yes.

(Testimony of Charles Edward Graham.)

Q. Do you know who it was that was in that outboard boat? A. Yes, I do.

Q. Who was it? A. John Lamb.

Q. And did you hear any conversation between the persons who were aboard the *Rolling Wave* at the time you saw it fishing illegally there?

A. Yes. I heard a few snatches of conversation. When the set was first started there was some conversation between [133] one man on the boat and one man that was running an outboard motor, hazing the fish.

Q. What was this man doing, hazing the fish? Tell the jury what he was doing.

A. Well, evidently the fish hadn't moved out of the creek far enough. It was not the right stage of the tide or a little bit early, and the fish hadn't moved out to where they could get at them easily, so he was hazing them out by means of an outboard motor and a skiff, driving the fish out into the salt water.

Q. And that was away from the mouth of the stream there; is that right?

A. That is correct.

Q. Now, what boat was that?

A. That was the boat they use for setting seine on the *Rolling Wave*.

Q. Was that a boat that was removed from the *Rolling Wave*? A. Yes, it was.

Q. Was it operated by one of the crew members of the *Rolling Wave*? A. Yes, it was.

(Testimony of Charles Edward Graham.)

Q. While he was up there hazing the fish, driving them back, was anything said to him?

A. Yes. There was a few words spoken to him.

Q. What were they? [134]

A. Somebody on the Rolling Wave called out to him to come back, that they were all fouled up, and the first time that he called the man in the skiff didn't hear the words, so the second time he called a little bit louder and he said, "Come on back, Red. We are all fouled up," and that was all there was.

Q. Did he go back near the Rolling Wave then?

A. Yes. He did then.

Q. And what was the reason for them wanting this person operating this boat to come back to the Rolling Wave?

A. I presume it was because they needed help to clear their seine.

Q. Now, did you hear—do you know that John Roger Lamb came up alongside the Rolling Wave while they were fishing there? Didn't you say that?

A. Yes.

Q. And how long did he stay there?

A. He stayed approximately forty minutes, I should say.

Q. Then did he leave? A. Yes, he did.

Q. Did you recognize any voice that you heard speaking that was on the Rolling Wave?

A. Yes, I did. I recognized one voice from the Rolling Wave.

Q. Who was that?

A. William Cummings. [135]

(Testimony of Charles Edward Graham.)

Q. Was he a member of that crew of the Rolling Wave? A. Yes, he was.

Q. Now, did you hear any conversation relative to Joe Patterson?

A. I couldn't say I heard it relative to Joe Patterson. I heard the name "Joe" used several times.

Q. What was said about "Joe"?

A. Well, as the brailing was going on, as they were taking the fish from the net into the boat, several times one of the crew members, or several of the crew members, cried out to "Hold it. Hold it," or, "Take it slow," or a term similiar to that, and they used "Joe," "Hold it, Joe. Hold it, Joe. Take it slow, Joe."

Q. Mr. Graham, did you have an occasion to see Richard Warner on or about August 20, 1950?

A. Yes.

Q. Where were you when you saw him?

A. I was approximately one mile east of Orca Point in Quadra.

Q. And did you have a conversation with him?

A. Yes, I did.

Q. Did he give you anything while you were there?

A. Pardon me. I made a mistake on that. I was thinking of another time. I saw him at Cygnet Island on August 20th.

Q. Then on the 20th of August, 1950, you saw him at or near Cygnet Island? [136]

A. Yes. I saw him at his anchorage at Cygnet Island.

(Testimony of Charles Edward Graham.)

Q. And did he give you anything at that time?

A. Yes, he did.

Q. What did he give you?

A. He gave me a plain airmail envelope which was sealed, and that was all.

Q. Did he have anything in it?

A. I could tell there was something in it.

Q. Did he tell you whether there was money in it or not? A. Yes, he did.

Q. I show you Plaintiff's Exhibit No. 2 and ask you to state whether or not this envelope is the same envelope or one similar to the one that Richard Warner gave you on or about August 20, 1950?

A. Yes; this is a similar envelope. I couldn't possibly say whether it was the same one.

Q. Did he give you any other envelope on that day? A. He did not.

Q. He didn't give you any other airmail envelope? A. No, sir.

Q. Then what did you do with that envelope that Richard Warner gave you?

A. As soon as he gave it to me I slipped it into my shirt, and when we departed Boca de Quadra I handed that envelope over to Robert Halstead, game management agent. [137]

Q. Did you give Robert Halstead the same envelope that Richard Warner had given you?

A. Yes, I did.

Q. And the contents of it had not been removed?

A. No, they hadn't.

(Testimony of Charles Edward Graham.)

Q. Who is Robert Halstead?

A. Robert Halstead?

Q. Robert Halstead; who is he, and what did he do?

A. Robert Halstead was identified to me as United States Game Management Agent from North Carolina.

Q. In other words, working for the Fish and Wildlife Service along with the other boys?

A. That is right.

Mr. Baskin: You may examine the witness.

Cross-Examination

By Mr. Kay:

Q. Mr. Graham, where was your regular base of operation, or did you have any, during the 1950 season? Where were you regularly stationed?

A. At Ketchikan.

Q. During the fishing season you were stationed at Ketchikan?

A. Oh, I see what you mean. No. Our patrol area extends from the Canadian border north to Rat's Harbor and out to Cape Shakon and also takes in the back entrance to this [138] island that we live on.

Q. You cover that entire area?

A. We try to.

Q. Then you are not a stream watchman or anything like that, located in any particular location?

A. No, I am not.

(Testimony of Charles Edward Graham.)

Q. I don't believe I got your exact position.

A. I am an enforcement patrolman and I am skipper on one of our patrol boats.

Q. And what boat are you skipper of, Mr. Graham? A. Number 7.

Q. And on the night of August 18th did you come into the Boca de Quadra area on Number 7, or how did you get in there, sir?

A. No, I did not. I was already there.

Q. When had you arrived in the Boca de Quadra area? A. On August 17th.

Q. And what did you do when you came into the area on August 17th? Did you let anybody know you were there? A. No, I did not.

Q. Did you see Richard Warner or Eugene Cott-rill on August 17th? A. No.

Q. Who was with you when you came into the area on August 17th?

A. Agent Halstead. [139]

Q. Did you have any particular reason for coming into that particular area on August 17th?

A. Yes. My duties were to, while I was there, to patrol Mink Bay stream, which had a large amount of fish in it:

Q. Who had given you that order?

A. Johnny Wendler.

Q. When had you seen Johnny Wendler?

A. I had seen Johnny Wendler on the 16th.

Q. Where did you see Mr. Wendler?

A. On my boat.

Q. He came aboard your boat?

(Testimony of Charles Edward Graham.)

A. Yes, he did.

Q. Did he give you any particular instructions, Mr. Graham, with regard to the evening of August 18th?

A. No, he did not.

Q. About what time was it that you were on the bank of Humpback Creek on the night of August 18th?

A. Approximately, the time we arrived was approximately, I should say, about nine o'clock, eight-thirty or nine o'clock.

Q. It was after dark, wasn't it?

A. It was after dark, just shortly after dark.

Q. How did you go in there, on the boat or——

A. I walked.

Q. You walked in? Where did you walk in from? [140]

A. I walked in from Humpback Lake.

Q. How had you gotten into Humpback Lake?

A. Flown.

Q. Who flew you into Humpback Lake?

A. A Coast Guard Gruman airplane.

Q. A Coast Guard Gruman airplane?

A. That is right.

Q. Not a Fish and Wildlife plane? A. No.

Q. And they had picked you up off of your boat?

A. No, they had not.

Q. Well, where did they pick you up?

A. In town, in Ketchikan.

Q. I see. Well, did you come to Ketchikan between August 17th and August 18th then?

(Testimony of Charles Edward Graham.)

A. No, I did not.

Q. When was it that you landed in Humpback Lake and walked down to the creek?

A. The 17th.

Q. Well, are you certain now that it was the 17th or the 18th?

A. Is it permissible to check notes?

Q. Certainly, as far as I am concerned.

A. I flew into Humpback Lake the evening of the 17th at approximately, I should say we got there at sixty-thirty or quarter to seven. [141]

Q. Then this illegal fishing—did you walk over that same evening? A. Yes, we did.

Q. And that is the evening on which you say that you saw the Rolling Wave in the area making a set? A. No, it is not.

Q. You walked over on the evening of the 17th during the night? A. That is right.

Q. And remained there all day on the 18th?

A. No, we did not.

Q. What did you do on the 18th?

A. We went back to the lake again.

Q. Walked over on the evening of the 17th and watched for illegal fishing?

A. That is right.

Q. Did any occur that night?

A. No, it did not.

Q. So you walked back over to the lake and waited until next day and then came back down?

A. That is right.

(Testimony of Charles Edward Graham.)

Q. To the same point? A. That is right.

Q. On Humpback Creek?

A. That is right. [142]

Q. And you had been advised, that it was likely that a particular fish violation would occur on either the evening of the 17th or 18th, by Mr. Wendler, had you not? A. Yes, we had.

Q. And you were in fact put out there in order to observe this particular case of illegal fishing, were you not, by Mr. Wendler?

A. Yes; this particular case or any violation.

Q. Or any violation that might occur on either of those two nights? A. That is right.

Q. But Mr. Wendler informed you that he had reason to believe that a violation might occur?

A. Yes; that is true.

Q. And you were flown into Humpback Lake to give the impression—did they cut off the motor as they landed on Humpback Lake?

A. No, they didn't.

Q. And you walked back in during the night on each occasion; would you? A. Yes.

Mr. Kay: That is all.

Mr. Baskin: No further examination.

(Witness excused.) [143]

ROBERT O. HALSTEAD

called as a witness on behalf of the Government,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your name?

A. Robert O. Halstead.

Q. Where do you live, Mr. Halstead?

A. Washington, North Carolina.

Q. Who are you employed by?

A. The United States Fish and Wildlife Service.

Q. And what is your position with the Fish and
Wildlife Service?

A. U. S. Game Management Agent.

Q. And in the State of North Carolina?

A. Well, that is right.

Q. And did you work for the Fish and Wildlife,
you were employed by the Fish and Wildlife Serv-
ice during the summer of 1950, were you not?

A. Yes, sir.

Q. And where did you work during the summer
of 1950?

A. Alaska; southeastern part of Alaska. Head-
quarters at Ketchikan.

Q. What time did you arrive in Alaska?

A. July 30th.

Q. 1950? [144] A. That is right.

Q. And then did you work as Fish and Wildlife
agent through the month of August, 1950?

A. I did.

(Testimony of Robert O. Halstead.)

Q. And that is in Southeast Alaska?

A. Yes, sir.

Q. Calling your attention to the date of August 18, 1950, tell the jury where you were?

A. On August 18th I was at Boca de Quadra, walked down the trail that leads to Mink Bay along Humpback Creek. We arrived at——

Q. Just a minute now. You went from——did you go from Humpback Lake down to the beach on Mink Bay? A. Yes, sir.

Q. And did you see a fishing vessel within the area closed to commercial fishing and Mink Bay on that day? A. I did.

Q. What vessel was it?

A. I could not see the name on the vessel that was fishing on the night of the 18th.

Q. Do you know what vessel it was?

A. No; not by name. It was a gray seine boat.

Q. What did that vessel do?

A. It made a set in the mouth of Humpback Creek, some distance off from the mouth of the creek but just opposite it. [145]

Q. Now, what do you mean when you say, "It made a set"?

A. It put out a fishing net and pursed it up. It is called a set, I think, in fishing language.

Q. Did you see a boat off of that vessel running around near the mouth of Humpback Creek?

A. I did.

Q. How long did that boat move around near the mouth of Humpback Creek?

(Testimony of Robert O. Halstead.)

A. I would say ten minutes, approximately.

Q. Did you hear any conversation during the time that boat was moving around near the mouth of the creek?

A. Yes, sir. The conversation I heard was, "Hey, Red, come here. Hey, Red, come here. We are all fouled up."

Q. On that same occasion could you see whether or not, or would you know whether or not the net, or the seine net, of that vessel was fouled up?

A. It looked from where I was as though it was fouled up.

Q. And did they get it untangled?

A. Yes, sir.

Q. At that time did you see another boat come alongside the vessel that was there fishing?

A. A few minutes later another boat came alongside.

Q. Do you know who was in that boat?

A. From the sound of the voice and the way it looked I recognized the voice as that of John [146] Lamb.

Q. And was he an agent of the Fish and Wildlife Service at the time? A. Yes, sir.

Q. How long did he stay there?

A. I would say approximately forty minutes.

Q. What did he do while he was there?

A. Well, he tied alongside the boat, and the way the shadows were I couldn't see too much as to what he did.

Q. What did he do after about forty minutes?

(Testimony of Robert O. Halstead.)

A. He proceeded back towards Cygnet Island.

Q. Did they complete a set there?

A. Yes, sir; I believe there was a set completed.

Q. And did you see them brail fish?

A. Well, I could not observe all the brailing, but I could hear the conversation and hear the way the lines were slipping and all that. I believe they were brailing.

Q. Did you hear the name "Joe" mentioned while they were brailing?

A. Yes, sir. At several intervals somebody would holler, "Hold it, Joe. Hold it, Joe."

Q. Now, on or about August 20, 1950, did you have an occasion to see Charles Graham?

A. What date is that?

Q. August 20, 1950?

A. Charles Graham; yes, sir. [147]

Q. Did he give you anything? A. Yes, sir.

Q. What did he give you?

A. He gave me an envelope, and at about seven-thirty or quarter to eight.

Q. Is that p.m.? A. P.M.; yes, sir.

Q. And did that envelope contain something?

A. Yes, sir.

Q. Did he give you more than one envelope?

A. No, sir. He gave me one.

Q. Did he tell you what was in the envelope?

A. Yes, sir; what he thought was in it.

Q. What did he say?

A. He said there was money in that, that we were to bring it to Ketchikan.

(Testimony of Robert O. Halstead.)

Q. I show you Plaintiff's Exhibit No. 2 and ask you to examine it and state whether or not that is the same or a similar envelope that was given you by Charles Graham on August 20, 1950?

A. That is the same or similar, but it did not have any writing on it at that time.

Q. This writing here, serial numbers, etc., has been put on since you saw it; is that right?

A. Yes, sir. [148]

Mr. Baskin: I think the record will show that the Clerk of the Court has placed them on there.

The Court: I don't think there is any dispute over that phase of the case anyhow.

Q. Did you at any time examine the contents of this envelope? A. Not that day; no, sir.

Q. When did you examine it?

A. On August 21st.

Q. Where were you when you examined it?

A. In the District Attorney's Office.

Q. In Ketchikan, Alaska? A. Yes, sir.

Q. And did you find that it contained twenty, I mean contained six twenty-dollar bills?

A. Yes, sir.

Mr. Baskin: You may examine the witness.

Cross-Examination

By Mr. Kay:

Q. When did you first go into the Boca de Quadra area there, Mr. Halstead?

A. When did I first go into the area?

(Testimony of Robert O. Halstead.)

Q. Yes. A. On the 17th?

Q. August 17th? [149]

A. Yes, sir. Late in the evening, I would say about seven p.m.

Q. And how did you get into the area at that time?

A. By the United States Coast Guard plane.

Q. Flew in from Ketchikan? A. Yes.

Q. Now, had you been in the Boca de Quadra area on the boat previously that summer?

A. Yes, I had.

Q. A few days previously or some time?

A. A few days previously.

Q. And then had come into town and then gone back out there on the Coast Guard plane on the evening of the 17th? A. That is right.

Q. And where did the plane land you on that occasion? Humpback Lake?

A. Humpback Lake.

Q. Now, you walked down and observed the Mink Arm area on the evening of August 17th?

A. Yes, sir.

Q. And went back over to Humpback Lake and then back down again the next evening; is that right? A. That is right.

Q. When you were in Ketchikan before you went out there on the Coast Guard plane, you were instructed by Mr. Wendler [150] that a possible violation might occur there at that particular point?

A. That is right.

(Testimony of Robert O. Halstead.)

Q. And you had been sent out by Mr. Wendler to observe that particular operation, had you not?

A. That is right.

Mr. Kay: That is all.

Mr. Baskin: No further examination.

(Witness excused.)

JOHN D. WENDLER

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your full name?

A. John D. Wendler.

Q. What agency are you employed by?

A. The Fish and Wildlife Service.

Q. And what is your position with the Fish and Wildlife Service?

A. Enforcement Agent.

Q. Where are you stationed?

A. Ketchikan, Alaska.

Q. How long have you been enforcement agent?

A. During the last two years. [151]

Q. Calling your attention to August 18, 1950, where were you on that day, on or about that day?

A. I was at Mink Arm.

Q. And what were you doing there?

A. We were investigating a possible fishery violation and bribery violation.

(Testimony of John D. Wendler.)

Q. Where were you on Mink Arm?

A. Right at the mouth of Humpback Creek.

Q. Did you have an occasion to see a fishing vessel within the, in the waters closed to commercial fishing in that area?

A. I did.

Q. Who was with you at the time?

A. United States Game Management Agent Robert Halstead and Enforcement Patrolman Charlie Graham.

Q. What vessel did you see in that area?

A. The Rolling Wave.

Q. At the time. What did the Rolling Wave do?

A. Well, the Rolling Wave entered the area about eleven-fifteen p.m., and at eleven-twenty-five they started to make a set.

Q. Well, what did they do there?

A. They let their seine go.

Q. Did they complete a set?

A. No. They snagged up. We couldn't tell exactly what they [152] snagged up on.

Q. And tell whether or not you saw a boat off of the Rolling Wave running around up near the mouth of Humpback Creek.

A. I did.

Q. Was that a boat off of the Rolling Wave?

A. It was.

Q. And was it piloted by a crew member of the Rolling Wave?

A. It was.

Q. And what was it doing?

A. It was driving the fish out of the stream mouth over toward where they were making the set.

(Testimony of John D. Wendler.)

Q. Over toward the net that they had out in the water? A. That is right.

Q. Then did you see another boat approach the Rolling Wave during that illegal fishing operation?

A. I did.

Q. What boat was that?

A. That was Stream Guard Lamb's boat.

Q. Who was piloting that boat?

A. John Lamb.

Q. Was he an agent of the Fish and Wildlife Service at the time? A. He was.

Q. And how long did he stay there?

A. Approximately forty minutes. [153]

Q. What did he do while he was there?

A. Well, the first thing he did he yelled out, "How did you become all fouled up?" We could hear that, and I could identify it as John Lamb.

Q. Well, what did he do in the way of the operation, in the making of that set; anything?

A. We couldn't tell exactly what he was doing. He was helping them clean the net, or something.

Q. And how long was he there?

A. Forty minutes.

Q. What did he do after the forty minutes was up?

A. He proceeded back towards the entrance of Mink Bay.

Q. Did the fishing vessel Rolling Wave complete a set there and brail fish?

A. Later on during the evening.

(Testimony of John D. Wendler.)

Q. That same evening?

A. The morning of the 19th.

Q. Now, calling your attention to about August 12, 1950, did you cash a check for John Roger Lamb? A. I did.

Q. How much was that check?

A. It was approximately three hundred and ninety dollars.

Q. Did you pay any bills at Lamb's request out of that three hundred and ninety dollars?

A. I did. [154]

Q. Tell the jury what bills you paid out of it.

A. Well, I paid one bill to Harry Kates for eighty-five dollars, and I went to the Marine Hardware, I believe it was, and purchased an outboard wheel and two spare plugs for about five seventy-five, or just about that much.

Q. Did he give you money for a fishing license for himself or his wife? A. He did.

Q. About how much was that?

A. Five dollars.

Q. About how much money was returned to John Lamb out of that money?

A. The remaining part, about three hundred dollars.

Q. Then in round numbers it was right close to around three hundred dollars; is that right?

A. That is right.

Mr. Baskin: You may examine the witness. Oh, excuse me. I would like to ask him a few other questions if it pleases the Court.

(Testimony of John D. Wendler.)

Q. Mr. Wendler, was John Roger Lamb employed as a Fish and Wildlife agent?

A. Yes, sir.

Q. What was his title?

A. Deputy enforcement agent.

Q. That is O.K. Now, then, tell the jury what his duties [155] were as such?

A. He had the same duties as any enforcement agent of the Fish and Wildlife Service, which was mainly to enforce all laws and regulations and arrest anyone caught in a violation and to prevent any illegal operation whatever in the area.

Q. That is any illegal fishing, he was to prevent any illegal fishing or prevent any violations of the laws and regulations concerning the conservation of fish in Alaska? A. That is right.

Q. And was he so instructed by you?

A. He was.

Q. Tell the jury whether or not he was instructed to report to you any violations of the Fish and Wildlife, any violations of the laws and regulations of the Fish and Wildlife—I mean, any laws and regulations conserving fisheries in Alaska?

A. That is correct.

Mr. Baskin: You may examine the witness.

Cross-Examination

By Mr. Kay:

Q. John Roger Lamb was duly appointed as a Fish and Wildlife agent, was he not, on June 7, 1950? A. That is correct. [156]

(Testimony of John D. Wendler.)

Q. And remained as such down to August 22, 1950, did he not? A. That is correct.

Q. At all times between June 7th and August 20, 1950, John Roger Lamb was a duly authorized deputy enforcement agent of the Fish and Wildlife Service of the United States Government? Right?

A. That is correct.

Q. Prior to August 18, 1950, Mr. Wendler, have you had reason to suspect that John Roger Lamb was selling fish illegally or taking bribes as a law enforcement officer? A. I did.

Q. Will you state to the jury how long prior to August 18th?

Mr. Baskin: Your Honor, I object to that. That is immaterial, how long before.

Mr. Kay: I think it is very relevant as to when the plan began, your Honor.

Mr. Baskin: Not as to how long he understood it. It has nothing to do with it.

The Court: Will you repeat the question?

Court Reporter:

“Q. Prior to August 18, 1950, Mr. Wendler, have you had reason to suspect that John Roger Lamb was selling fish illegally or taking bribes as a law enforcement officer? A. I did.

“Q. Will you state to the jury how long prior to August 18th?”

The Court: How is that— [157]

Mr. Baskin: I misunderstood the question, your Honor. I am sorry. I will withdraw the objection,

(Testimony of John D. Wendler.)

as it is now framed. I thought he said another date.

The Court: Very well.

A. Since August 9, 1950.

Q. And on August 9th, you at all times after August 9th, then you had reason to suspect that John Roger Lamb was permitting illegal fishing in that area? A. I did.

Q. And did you after August 9th then, Mr. Wendler, in accordance with your duties make preparations to attempt to catch John Roger Lamb in the act of permitting illegal fishing?

A. Yes.

Q. Or accepting bribes? A. I did.

Q. And that involved the sending of Agent Robert Halstead and Agent Charlie Graham out to the area on, out to Humpback Lake on August 17th in a Coast Guard plane? A. That is correct.

Q. Did you accompany them on that plane on that night? A. I did not.

Q. You came in later, or were you already there?

A. I was not there.

Q. You were not one of the gentlemen walking down from [158] Humpback Lake on August 18th?

A. On August 18th, but not the 17th.

Q. Did you come into the area on August 18th; Humpback Lake, that is? A. I did.

Q. Flew in? A. I did.

Q. And what kind of plane took you?

A. Fish and Wildlife Service plane, Widgeon 743.

(Testimony of John D. Wendler.)

Q. That plane landed there, let you off, and you joined Agents Halstead and Graham who were already there; is that correct, sir?

A. That is correct. But that is not the number of the plane. I don't know the number of the plane.

Q. Well, it is completely immaterial, I assure you. And prior to that time you had also instructed Richard Warner, employed by the Fish and Wildlife as enforcement patrolman—you had received a report from Richard Warner on about August 15th, had you not? A. I did.

Q. Was it—I am sorry—was that August 15th or August 16th that you received the report from Warner?

A. I believe it was earlier than that.

Q. You had received a report from him earlier with regard to the situation than August [159] 16th? A. I did.

Q. You had a conversation with Richard Warner on August 16th, did you not, in which you, Dan Ralston and Bob Meeks were present?

A. I did.

Q. And at that time Richard Warner advised you, did he not, of the fact that he and John Roger Lamb had gone aboard the boat Rolling Wave on August 15th, the day previously?

A. Will you state that again?

Q. Did Richard Warner tell you on that occasion that he and Lamb had gone aboard the Rolling Wave on August 15th?

(Testimony of John D. Wendler.)

A. I don't remember that.

Q. Well, did he tell you that he and John Roger Lamb had had a discussion or conversation with anyone on the Rolling Wave?

A. That is correct.

Q. And he informed you what the gist of that conversation was? A. That is correct.

Q. Now, you had advised Richard Warner, had you not, Mr. Wendler, that he was to go along and not entice John Roger Lamb, but at the same time try to catch him in the act of accepting a bribe, had you not? A. That is correct.

Q. And prior to this conversation now, on August the 16th with you, Dan Ralston, Bob Meeks and Richard Warner were [160] present, had you received any report from Richard Warner with regard to any possible violations by the Rolling Wave? A. I did.

Q. When was that report received from Richard Warner? A. August 13th.

Q. On August 13th? August 13th, now where did that occur, Mr. Wendler?

A. I believe I stopped in on the plane and picked it up.

Q. You stopped in on the plane. Where do you mean by "stopped in"? A. Orca Point.

Q. At the anchorage at Orca Point? And on that day Richard Warner handed you a report, or was it an oral report?

A. It was a written report.

Q. And it is your testimony, sir, that that writ-

(Testimony of John D. Wendler.)

ten report contained a reference to a possible violation by the Rolling Wave?

A. That is correct.

Q. Did that report say that John Roger Lamb had on that date or at some time prior to August 13th made a deal with anyone on the Rolling Wave to engage in illegal fishing out there?

A. That is correct.

Q. I see. Warner stated in this written report that Lamb had [161] told him that he had made a deal with the Rolling Wave; is that correct, or in substance correct? A. That is correct.

Q. And that report is dated August 13, 1950?

A. I don't believe it is dated that date, but that is the date I received it.

Q. It may have been written the day previous or something like that, but it was received by you on August 13th? A. That is correct.

Q. Prior to August 13th, 1950, when you received this report from Richard Warner, mentioning the Rolling Wave, had you received any previous reports of any possible violations by the Rolling Wave? A. I have.

Q. When did you receive such a report?

A. August 9th.

Q. On August 9th. Was that a report from Richard Warner? A. That is correct.

Q. And in that report—was that a written report on August 9th? A. No, sir.

Q. Oral report; is that correct?

(Testimony of John D. Wendler.)

A. That is correct.

Q. And at that time did John, I mean did Richard Warner state to you in substance that he believed that John Roger Lamb [162] had made some deal with the Rolling Wave with regard to illegal fishing?

Mr. Baskin: Your Honor, I object to that. It is hearsay.

The Court: Well, I am just wondering about the relevancy of this anyhow.

Mr. Kay: Well, it is certainly relevant, sir, tending to reflect on the story told by the chief witness for the prosecution, John Roger Lamb, who said that no discussion had ever taken place prior to August 14th, 1950.

Mr. Baskin: Well, your Honor, that isn't what this witness is testifying to anyway. He is testifying to pure hearsay, and it is irrelevant and immaterial, and I will object to it.

Mr. Kay: It seems to me it certainly is impeaching.

Mr. Baskin: He asked him as to the contents of a report that Warner made.

The Court: It seems to me it is subject to the same infirmity as the testimony stricken. It is hearsay. Objection sustained.

Mr. Kay: May I be heard, your Honor? Here we have testimony by one witness for the Government who testifies that the Rolling Wave——

Mr. Baskin: Well, your Honor, if he is going to

(Testimony of John D. Wendler.)

argue it, I think the jury ought to be excused. [163]

Mr. Kay: I would certainly like to argue it.

The Court: Well, the jury may be excused for the day anyhow.

Mr. Baskin: Well, why don't we finish this witness before we complete the day? Apparently he doesn't have much more to ask the witness.

The Court: Apparently he can't finish without a ruling on this thing.

Mr. Kay: If that testimony is left in, that is all I need out of this witness with the possible exception of this question——

Mr. Baskin: I won't move that the jury be excluded then at this time, your Honor.

Mr. Kay: I was going to ask another question.

The Court: Well, but the objection has been ruled on, and you wanted to argue it.

Mr. Kay: Well, all right. I have only one more question of the witness.

The Court: Doesn't the asking of that question depend on the Court's ruling on this?

Mr. Kay: Yes. I was going to ask him where John Roger Lamb, I mean where Richard Warner told him he got the information, if it was John Roger Lamb.

The Court: Well, that would again be hearsay, and I suppose it would be objected to as [164] hearsay.

Mr. Baskin: Yes, it will, your Honor.

The Court: Will that finish your examination?

Mr. Kay: May I point this out, your Honor? Well, I don't want to argue in the presence of the

(Testimony of John D. Wendler.)

jury. That would complete my examination, that is true. He could answer the question and, if it is to be stricken, it could be stricken along with the rest of it.

Mr. Baskin: I am going to object to it before he asks it.

The Court: Well, the damage in the view of the District Attorney would have been done. Do you have any further redirect examination?

Mr. Baskin: Yes, I do, your Honor.

Redirect-Examination

By Mr. Baskin:

Q. John, you mentioned that you contemplated and asked, I believe, Warner to make, to investigate a possible violation, an illegal fishing, and also catching of Lamb in a possible bribery or an illegal fishing. Now, then, did you also instruct him to investigate and inquire into the circumstances of any person who might fish in that area illegally?

A. I did.

Q. And to inquire and investigate into [165] the circumstances of any person who might bribe or give money to John Roger Lamb for the purpose of permitting them to fish in that area in the closed area? A. I did.

Q. The counsel asked you with regard to that report that Warner referred to you and, I believe, he mentioned the deal that Lamb made with the Rolling Wave to fish illegally. Now, wasn't the substance of that report to the effect that the Roll-

(Testimony of John D. Wendler.)

ing Wave had made, was going to fish in the closed waters of Mink Arm or Boca de Quadra and fish illegally? A. That is correct.

Mr. Kay: Do I understand that the United States Attorney is now examining about hearsay evidence which your Honor has ruled be excluded?

The Court: Hearsay evidence has got to be objected to before the Court can exclude it, otherwise it goes in for the consideration of the jury.

Mr. Kay: I thought the Court instructed on hearsay on its own motion. Am I correct in that?

The Court: No; on the objection of the United States Attorney. The Court never strikes hearsay evidence unless counsel object to it because hearsay evidence may be considered by the jury, in the absence of objection, for what it is worth. [166]

Mr. Baskin: No further examination.

(Witness excused)

Mr. Baskin: If the Court please, I think this would be a good time to recess.

The Court: Were you through?

Mr. Kay: I am through.

The Court: Ladies and gentlemen of the jury——

Mr. Kay: Pardon me. I would like to have each of these witnesses, I presume they will be, particularly Warner and Wendler, available during the trial.

The Court: No difficulty about that?

Mr. Baskin: They will be here.

The Court: They should be here in view of the announcement of counsel.

Whereupon the jury was duly admonished and Court adjourned until 10:00 o'clock a.m., October 24, 1950, reconvening as per adjournment, with all parties present as heretofore, and the jury all present in the box; whereupon the trial proceeded as follows:

The Court: Call your next witness.

JULIA ELLEN LAMB

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your full name? [167]

A. Julia Ellen Lamb.

Q. Are you the wife of John Roger Lamb?

A. I am.

Q. Mrs. Lamb, where were you living during August, 1950?

A. On the boat at Boca de Quadra.

Q. Calling your attention to August 19th, on or about August 19, 1950, did your husband show you anything? A. Yes, he did.

Q. What did he show you?

A. He showed me sixty dollars in money that he was supposed to have received from Joe Patterson.

Q. And he told you where he got it?

A. He did.

Q. And where did he, who did he get it from?

(Testimony of Julia Ellen Lamb)

A. He said he received it from Joe Patterson.

Q. Now, calling your attention to August, on or about August 21, 1950, did he show you anything?

A. He showed me some money he received that time.

Q. How much money did he show you?

A. One hundred dollars.

Q. And did he tell you where he got it?

A. Yes. He said he received it from Joe Patterson.

Mr. Baskin: You may examine the witness.

Mr. Kay: No questions.

(Witness excused) [168]

KENNETH P. SAMPSON

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Baskin:

Q. What is your full name?

A. Kenneth P. Sampson.

Q. What is your occupation or employment, Mr. Sampson?

A. Deputy U. S. Marshal at Ketchikan, Alaska.

Q. How long have you been a Deputy U. S. Marshal? A. Approximately——

Q. At Ketchikan?

A. Approximately five years, in Ketchikan.

Q. Mr. Sampson, state whether or not on or

(Testimony of Kenneth P. Sampson)

about August 22, 1950, you arrested John Roger Lamb? A. I did.

Q. And at the time of the arrest tell the jury how much money he had in or on his possession?

A. He had six hundred and seventy dollars and ninety-two cents.

Mr. Baskin: You may examine the witness.

Mr. Kay: No questions.

(Witness excused)

Mr. Baskin: The Government rests, your Honor.

The Court: Are you ready to go on?

Mr. Kay: At this time, your Honor, I would like to [169] make a motion and be heard on it very briefly out of the presence of the jury.

The Court: The jury may retire until called.

Whereupon the jury retired from the courtroom.

The Court: You may make your motion.

Mr. Kay: At this time I would like to move the Court for a judgment of acquittal.

Whereupon argument on the motion was presented by Mr. Kay.

The Court: The witness Lamb testified to the contrary, and of course the evidence for the Government on a motion of this kind must be viewed in the most favorable light with all the inferences that are reasonable to be drawn therefrom, so the motion will have to be denied. Call the jury.

Whereupon the jury returned and all took their places in the jury box.

The Court: Call your first witness.

Defendant's Case

JOSEPH C. PATTERSON

called as a witness on his own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Will you state your name please, sir? [170]

A. Joseph C. Patterson.

Q. And where do you live, Mr. Patterson?

A. Ketchikan.

Q. About how long have you been here in Ketchikan, sir? A. Approximately three years.

Q. And where did you live before you came to Ketchikan? A. San Diego, California.

Q. Married and live here in Ketchikan?

A. Yes.

Mr. Baskin: I object, your Honor.

Mr. Bailey: It is irrelevant and incompetent.

Mr. Baskin: Calling for sympathy of the jury.

Mr. Bailey: What difference does it make if he is married?

Mr. Kay: The purpose is obvious, your Honor. It seems to me that it would give the jury a reasonable speaking acquaintance with the defendant. I don't know that there is anything prejudicial about a man being married. There may be some people on the jury who don't approve of marriage.

The Court: Well, nevertheless, it is an irrelevant matter and one that might elicit the sympathy of the

(Testimony of Joseph C. Patterson)

jury. It is just not competent evidence that is all.
Objection sustained.

Q. Are you engaged in any business, Mr. [171] Patterson; in Ketchikan, Joe?

A. Yes. I have operated the 400 Club since I have been here and Ed and Joe's Pool Hall.

Q. And also have you engaged in any other occupation, sir?

A. I have engaged in fishing.

Q. Now, are you the owner or the part owner of any fishing vessel here in the City of Ketchikan?

A. I own the Rolling Wave, part owner, half owner.

Q. Who is the other part owner of that vessel?

A. Bill Tatsuda.

Q. When did you and Bill Tatsuda acquire the Rolling Wave, Joe?

A. In September of 1949, I believe.

Q. And have you owned the Rolling Wave ever since that time? A. Yes.

Q. Now, are you acquainted with John Roger Lamb who testified yesterday in this case?

A. Yes.

Q. How long have you known John Roger Lamb, Joe?

A. I have met him about three years ago, but I didn't become acquainted with him until this past, you might say, June or July.

Q. Prior to June or July—is that of 1950, Joe?

A. 1950.

(Testimony of Joseph C. Patterson)

Q. Now, prior to that time did you have anything more than a casual acquaintance with [172] John Lamb?

A. Nothing but a casual acquaintance.

Q. Now, have you ever had any conversations with John Lamb concerning fishing in the general area of Boca de Quadra? A. Yes.

Q. Do you recall approximately the first occasion on which you had such a conversation with John Lamb?

A. Approximately—after the testimony yesterday—

Mr. Baskin: Your Honor, I object to that. He should answer the question, not referring to any testimony previously testified to.

Mr. Kay: I am refreshing his recollection, your Honor, that is all.

Mr. Baskin: Well, he can refresh his recollection only by circumstances that he knows, not by what some witness has testified here on the witness stand.

Mr. Kay: He can refresh it by anything.

The Court: Well, I am inclined to think it can be refreshed by anything also, but I am wondering whether you have in mind asking him an impeaching question now.

Mr. Kay: Not at this point, no, your Honor. I was just trying to get a general identification as to the date of the first conversation that he recalls, if he recalls it, with John Lamb concerning fishing in the general area of Boca de Quadra.

(Testimony of Joseph C. Patterson)

The Court: Objection overruled. You [173] may proceed.

Q. Can you state, Joe, about when that would be? A. Sometime in June.

Q. Well, now, do you know whether it was the early part of June or latter part of June or middle of June; have you got any idea in that regard?

A. I would say the early part of June.

Q. Do you recall where that conversation took place?

A. At the back of Jimmy Tatsuda's grocery store.

Q. Who else was present at that time if you recall?

A. Bill Tatsuda, and Jimmy Tatsuda saw us talking in the back of the store.

Q. Now, how did it happen that you got into the conversation with John Lamb and Bill Tatsuda on that occasion?

A. John Lamb and Bill Tatsuda were talking in the back of the store, and I came in, and Bill Tatsuda hollered at me, "Come back, Joe, I want to see you a minute," so I walked back to the back of the store.

Q. To the best of your recollection, Joe, will you tell the jury in your own words what was said by John Roger Lamb, by Bill Tatsuda, and by yourself in that conversation, to the best of your recollection?

Mr. Baskin: Your Honor, I want to know if this is an impeaching question or if this is examination

(Testimony of Joseph C. Patterson)

establishing his case. If it is impeachng, he hasn't established the date and time on which this conversation took place, and that is essential [174] to impeach John Roger Lamb.

Mr. Kay: It is not an impeaching question. If it had been an impeaching question, I would have asked that exactly.

The Court: It is not impeaching in form of course. It falls far short of being impeaching.

Mr. Kay: It may result in impeaching the testimony of John Roger Lamb, but that is not necessarily impeachment, contradictory testimony.

The Court: That is the usual result of cross-examination. But so far as impeaching the witness by showing contradictory statements in the way prescribed by the statute of course the question would have to be put in impeaching form. But since you say that this is not such a question, why you may ask it in any way you see fit.

Mr. Kay: I believe I understand. All I am intending at this time is to bring out our case, then at the conclusion or toward the end of Mr. Patterson's testimony I had intended to ask him whether or not on such and such a date or thereabouts and in the presence of so and so and etc. in impeaching form. I asked the reporter——

The Court: You mean you would reiterate what he is about to do now, what he is about to say now? In other words, you have to choose the method, as I see it. If you are going to use the defendant here

(Testimony of Joseph C. Patterson)

as an impeaching witness to impeach the [175] witness Lamb, then of course you would have to put the question in impeaching form but, if you merely want to put in substantive evidence of your own defense, then you can proceed any way you see fit. But under the guise of putting in substantive evidence of the defense of entrapment, you can't cover at the same time what has already been stated to Lamb in the form of an impeaching question, otherwise you are evading the statute.

Mr. Kay: Well, certainly if that substantive evidence put in to support the defense of entrapment should result in a conflict or contradiction between the testimony of our witnesses and the testimony of John Roger Lamb, that would certainly have an impeaching effect although it would not be the technical impeachment which perhaps is required by the statute. If one witness contradicts another, it is for the jury to decide which witness is telling the truth. Am I correct?

The Court: Certainly. But as I said before, all you need to do is to avoid impeaching the witness under the guise of putting in substantive evidence, by showing the exact language used by the witness Lamb. In other words, while you can build up your own defense in any way that you see fit and put in substantive evidence in any way that you see fit, you cannot impeach a witness by showing contradictory statements [176] except in the manner provided by statute.

Mr. Kay: Well, now suppose, your Honor, that

(Testimony of Joseph C. Patterson)

the testimony in response to the question, which is merely to state his recollection of that conversation, contradicts the testimony of John Roger Lamb who, as I recall, testified that no such a conversation occurred; already there is a contradiction as far as that goes.

The Court: Well, my recollection is that you never put a question to the witness Lamb in impeaching form.

Mr. Kay: That is my recollection; except, I will withdraw that, with regard to the testimony of—I think an impeaching question was asked in regard to Rollie Lindsey and perhaps Chester Klingbeil. Now, I have asked the reporter to make a transcript of the evidence of the cross-examination of the witness Lamb. If I had that, I would be prepared to ask such questions as were impeaching in the exact words used. I don't see how it is possible to do that otherwise.

The Court: Well, we should remember the limits now of this rule, and that is this, that it is unfair to impeach a witness by asking questions of the impeaching witness, who is the defendant in this case, that were never asked the witness Lamb, and that is why the statute provides that before you can ask an impeaching question of the impeaching witness you have to ask it in practically the identical words in which the impeaching question was put to [177] the witness sought to be impeached, who is Lamb in this case. Now, it seems to me, that being the purpose of the statute and the limit of it, that you

(Testimony of Joseph C. Patterson)

should govern yourself accordingly. I have confidence in your knowing the limits of this rule and that you certainly have had enough experience with it to know that you won't try to deceive the Court, so you may proceed along that line. But, you can see what would happen if he relates a conversation now that the witness Lamb was never questioned about. Then it would become necessary to recall Lamb. It would never end.

Mr. Kay: I don't see how that could be possible, your Honor, because the witness Lamb denied any conversation took place in the back of the store during June, July or August. Now, if any conversation took place between the three parties specifically named to Lamb, then I think he has a right to say what that conversation was.

The Court: I don't remember what the witness Lamb's testimony was on that. I believe his testimony was that he didn't remember any such conversation.

Mr. Kay: All right; that he didn't remember or didn't recall any.

The Court: But you called his attention to a specific conversation, specific language. Now in order to impeach him on that it seems to me that your question here would have to be limited to that conversation, the language that you used [178] there, otherwise you would be impeaching a witness by showing another conversation or another statement about which the witness Lamb was never questioned.

(Testimony of Joseph C. Patterson)

Mr. Kay: Of course, all I have is my notes on the cross-examination, questions which I intended to ask Lamb, and I don't see any possibility of being mistaken about these conversations because there were only, as far as I know, two or three of them occurred, and I went over every one with Lamb extensively.

The Court: Of course, the only safe course to follow when you are going to put an impeaching question is to have it written out, and then you can put the same question to the impeaching witness.

Mr. Kay: Yes, sir.

The Court: But in this case what we are up against is this. You asked the witness Lamb whether he had certain conversations, and then you are asking this witness to state what conversations he had, and he may go off on some other conversation that the witness Lamb was never asked about and never had any opportunity to deny.

Mr. Kay: I don't see any possibility of that because, as I have said, and you will recall, your Honor, that he said he had only one conversation with Joe Patterson prior to August 14th or 15th and that that was a casual meeting on the street and it consisted of the words, "Hello," "I will be seeing [179] you."

The Court: But didn't you ask him after that whether he had a specific conversation which he said he didn't remember?

Mr. Kay: Yes.

(Testimony of Joseph C. Patterson)

The Court: Now, then, you can't impeach him by showing that he had some other conversation, some other conversation that you never questioned him about.

Mr. Kay: I am not intending to.

The Court: Very well then. You may proceed.

Mr. Kay: Perhaps this discussion should be out of the presence of the jury. I am still not clear as to whether or not the defendant Patterson, who has been asked a question, may answer that question, or whether I am going to be out of order if he relates the conversation not in the exact words used by me in the question to Lamb.

The Court: It wouldn't have to be in the exact words but in substance if it referred to the same conversation and was substantially the same so that there would be no question but that each one had the same conversation in mind.

Mr. Kay: I don't believe that there could be any question about that.

The Court: Well, you may proceed.

Mr. Baskin: Well, your Honor, there obviously is a question so far as the impeachment goes, and I am going to [180] continue my objection.

The Court: Well, you will have to object on some specific ground. What is it?

Mr. Baskin: I am going to object so far as that last question that was asked the witness that he has not placed the question in the proper form as re-

(Testimony of Joseph C. Patterson)

quired by statute to impeach the witness John Roger Lamb.

The Court: Will you repeat the question?

Court Reporter: Q. "To the best of your recollection, Joe, will you tell the jury in your own words what was said by John Roger Lamb, by Bill Tatsuda, and by yourself in that conversation, to the best of your recollection?"

The Court: Isn't that the conversation that the witness Lamb said he had no recollection of?

Mr. Kay: Yes, sir.

The Court: Did you relate the conversation to the witness Lamb in your question to him?

Mr. Kay: Yes, sir.

The Court: Then you have to relate it the same way to this witness.

Mr. Kay: I suppose then there will be an objection that it is a leading question.

The Court: No. An impeaching question is always leading in form. In other words, the form of it would be this—did not the witness Lamb at such and such a time and place [181] and certain persons being present say so and so in response to question so and so.

Mr. Kay: Well, let's see if I can recall the question proposed to the witness Lamb with regard to that conversation.

The Court: As I say, that is the difficulty, as I see it, here, that no question should ever be attempted to be put to an impeaching witness unless it is first written out, and repeated at the time that it is put to the witness sought to be impeached.

(Testimony of Joseph C. Patterson)

Mr. Kay: But, your Honor, to me this is not an impeaching question at all. I am putting in my substantive case, defense of impeachment, the question being—did you have a conversation with John Roger Lamb on or about June 7th.

The Court: That would be perfectly proper as substantive evidence in support of your defense except that it also here now in this situation tends to serve another purpose and that is to impeach Lamb in a manner prohibited by the statute. Now, for instance, you asked Lamb whether he had such and such a conversation in Tatsuda's store. He said, "I have no recollection of it." Then you put the defendant on the stand, and you don't ask him whether that precise conversation took place, but you ask him what conversation took place, and he may relate something entirely different that was never called to the attention of Lamb. Now, that is the vice in such [182] a procedure.

Mr. Kay: If that occurs, certainly Lamb could be called as a witness in rebuttal.

The Court: Yes; but that is just what the statute is intended to avoid, otherwise the first thing you know you have disorder and confusion; you have to recall and recall.

Mr. Kay: Precisely, if the purpose of this question was to impeach; but I am merely eliciting from my own witness his story as to the events leading up to his going out to the Boca de Quadra.

The Court: But the United States Attorney takes the view, and it is not an unreasonable one.

(Testimony of Joseph C. Patterson)

that by going about it this way you circumvent the statute and accomplish the impeachment of the witness Lamb in a way not permitted. Now, if you want to recall the witness Lamb and put an impeaching question to him as provided by statute, the Court will permit you to do so, but at the present time——

Mr. Kay: Perhaps that would be the most appropriate manner.

The Court: It would be the most orderly way of proceeding, and it would comply with the statute and remove all objection.

Mr. Kay: All right. I will ask permission at this time then to withdraw the witness Patterson, to take a ten minutes' recess while I prepare an impeaching question or two [183] or three, and then proceed with the case.

The Court: Very well.

Mr. Kay: I would like to have Mr. Lamb here in about ten minutes.

Mr. Baskin: Well, your Honor, he has closed his case—I mean we have rested, and Lamb was a Government witness and——

The Court: Well, that is true, but it is within the discretion of the Court to reopen the case, and I think that in the furtherance of justice we will permit this. So, Court will be recessed for ten minutes.

Whereupon Court recessed, reconvening in twenty minutes, with all parties present as here-

tofore and the jury all present in the box; whereupon the trial proceeded as follows:

The Court: Do you wish to recall the witness?

Mr. Kay: The witness John Roger Lamb for further cross-examination.

JOHN ROGER LAMB

recalled as a witness on behalf of the Government, having previously been duly sworn, testified as follows:

Cross-Examination

By Mr. Kay:

Q. Mr. Lamb, you are the same John Roger Lamb that testified before here yesterday? [184]

A. That is right.

Q. And you realize you are still under oath and have been sworn? A. That is right.

Q. Just one or two questions. Did you on or about July 10th or 18th, 1950, on the occasion of one of your visits to Ketchikan from your station at the Boca de Quadra in Tatsuda's grocery store in the City of Ketchikan in the presence of Joseph C. Patterson and William Tatsuda make substantially the following statements? Did you make the following statement that "I am going to be the stream patrolman for the Fish and Wildlife Service at Boca de Quadra again this year" that "I just got my appointment," or words to that effect? Did you make such a statement?

A. I don't recall it, sir.

Q. At the same time and same place and in the presence of the same persons did you make sub-

(Testimony of John Roger Lamb.)

stantially the following statement that "There is a lot of money to be made out there this year" that "I made a lot of money out there last year selling fish"? Did you make substantially that statement in the presence of those people?

A. I don't remember saying that.

Q. And did you at the same time and same place and in the presence of the same people say substantially as follows that "I am only going to work with one or two boats this [185] year instead of letting everyone in like I did last year"? Did you make substantially that statement?

A. I don't remember.

Q. And at the same time and place and in the presence of the same persons did you make substantially the following statement: "Why don't you fellows bring the Rolling Wave down there and fish the stream, and we will all make some money"?

A. I don't remember that.

Q. Did you make the following statement at the same time and same place in the presence of the same persons: "There is an early run of fish down there," meaning before the season opened, "Why don't you bring the Rolling Wave down there early and we will all make some money," or words to that effect? A. No.

Q. At the same time and same place and in the presence of the same persons, Joe Patterson and Bill Tatsuda, did you make substantially the fol-

(Testimony of John Roger Lamb.)

lowing statement: "You don't have to worry any about getting caught. I have it all fixed"?

A. No.

Q. You don't recall that?

A. No, I don't.

Q. Now, did you at about the same time in early June of 1950 in Ed and Joe's— [186]

Mr. Baskin: Now, your Honor, I think he ought to first—well, I will withdraw the objection. Excuse me.

Q. Did you at or about the same time in early June of 1950 have a conversation with Chester Klingbeil, at which you and Chester Klingbeil were present, in Ed and Joe's Pool Room in the City of Ketchikan, Territory of Alaska, in which you made substantially the following statements: "I just got word of my appointment as stream guard out at Boca again this year"? Did you tell Chester Klingbeil that?

Mr. Baskin: Your Honor, I object to that. He hasn't fixed the time as required by statute.

The Court: Well, he said about early in June.

Mr. Kay: Early in June.

The Court: I assume that is as close as you can fix it?

Mr. Kay: That is as close.

The Court: But how about the place and circumstances?

Mr. Kay: Ed and Joe's Pool Room in the City of Ketchikan.

The Court: Persons present?

(Testimony of John Roger Lamb.)

Mr. Kay: Persons present, Chester Klingbeil and the witness.

The Court: Objection overruled. [187]

Mr. Kay: That was the statement, I believe, your Honor.

Q. Did you under those circumstances and at that time and place tell Chester Klingbeil: "I just got word of my appointment as stream watchman out at Boca again this year"?

A. I don't recall that I did.

Q. Did you also at the same time and place and in the presence of the same person state: "You know there is an early run of sockeyes down there before the season opens. Why don't you come down and get them, and we can make some real money this season, and then we can work together this summer fishing the creeks? I am only going to work with one or two boats"? Do you remember making that statement?

A. I don't remember making that statement.

Q. Do you remember having such a conversation with Chester Klingbeil at any time?

A. I have met him several times. He is a long-shoreman.

Q. Do you remember having such a conversation at that time and place?

A. I don't believe so.

Q. Did you on June 20th at Thomas Basin in the City of Ketchikan, on the Thomas Basin Float in the City of Ketchikan, in the presence of Ches-

(Testimony of John Roger Lamb.)

ter Klingbeil, again make substantially the following statements: "You should come out [188] and fish down there now," and did Chester Klingbeil at that time tell you substantially, "Where would we market the fish before the season opens"? Do you recall that conversation? A. No, I don't.

Q. And did you at the same time and place, that is, Thomas Basin Float, June 20th, 1950, in the presence of Chester Klingbeil state to Chester Klingbeil: "There is no chance of getting caught out there. I have it fixed"?

A. It would be impossible for me to fix anything.

Q. And did you at the same time and place and in the presence of the same person state to Chester Klingbeil: "If I do get caught I can always turn State's evidence like the fellow up at Red Fish Bay"? Did you make that statement to Chester Klingbeil? A. I did not.

Mr. Baskin: Will you answer the questions loud enough so I can hear you, John?

A. I said, I did not.

Q. Now, on or about August 20, 1950, did you have a conversation with Rollie Lindsey—

Mr. Baskin: Your Honor, I am going to object to any further examination along this line. This has nothing to do with the bribery of Lamb by the defendant. It is wholly irrelevant and immaterial, and I am going to object to it. [189]

The Court: I think it is proper on a defense of this kind. Objection overruled.

(Testimony of John Roger Lamb.)

Mr. Baskin: Very well.

Q. I will have to start again, I believe, Mr. Lamb, with that question. Did you on or about August 20, 1950, have a conversation with Rollie Lindsey aboard the Diamond T in the vicinity of Cygnet Island in the area of the Boca de Quadra in the presence of his cook George in which you made substantially the following statements: "You should come into the creek. There are four or five thousand fish up there. There are a lot of fish in there"? Did you make that statement at that time and place? A. I don't recall that I did.

Q. Did you at the same time and place and in the presence of the same persons state to Rollie Lindsey: "There is a lot of money to be made out here this season. I am only going to work with one or two boats this season"? Did you make that statement to Rollie Lindsey at that time and place?

A. I don't believe so.

Q. Did you at the same time and place and in the presence of the same persons state: "There is no chance to get caught. I have it fixed." Did you state that to Rollie Lindsey? A. No.

Q. Did you at the same time and place and in the presence of [190] the same persons explain to Rollie Lindsey a signal system of flashlights by which the two stream patrolmen or two patrolmen working with you would signal in the event any other Fish and Wildlife boat approached the area?

A. I can't say I did.

Q. And did you at the same time and place and

(Testimony of John Roger Lamb.)

in the presence of the same persons offer to take one hundred dollars per thousand fish for permitting Rollie Lindsey to fish in the closed area of the Boca de Quadra? A. No.

Q. Were you aboard the Diamond T about four times on August 20, 1950?

A. I don't recall ever being aboard.

Q. You don't recall ever being aboard?

A. That is right.

Q. No further questions. Just a moment. One further question. Did you on August 21, 1950, board at any time during that day, board the Diamond T and the Rolling Wave in the vicinity of Cygnet Island in Boca de Quadra when the two boats were tied together? A. I don't believe I did.

Mr. Kay: No further questions.

Redirect Examination

By Mr. Baskin:

Q. John, some of these questions you have answered categorically [191] "No" and some you have said "I don't recall." If you had made those statements, would you have recalled them?

A. Yes, I would.

Q. If you don't recall, you didn't make the statements; is that correct?

A. I don't believe I did.

Mr. Baskin: That is all.

Recross-Examination

By Mr. Kay:

Q. You don't believe you did? A. No.

(Testimony of John Roger Lamb.)

Redirect Examination

By Mr. Baskin:

Q. You said if you had made them you would have remembered them?

A. I should think I would; yes.

Q. And you don't remember making them?

A. No, sir.

Q. And if you had made the statements, you would have remembered them?

Mr. Kay: I object to the continued repetition by the United States Attorney. He is trying to elicit something which this witness has repeatedly, and repeatedly throughout [192] this trial, said that he doesn't remember, he can't recall.

The Court: Well, but testimony of that kind should be subjected to a rather searching examination, I think. Objection is overruled.

Q. If you had made those statements, would you have remembered it now?

A. I believe I would; yes.

Mr. Baskin: That is all.

(Witness excused.)

The Court: Do you wish to recall the defendant?

Mr. Kay: Yes, sir. I would like to recall the defendant Joseph Patterson at this time, sir.

JOSEPH C. PATTERSON

recalled as a witness on his own behalf, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. You realize you are still under oath in this case having left the stand, Mr. Patterson?

A. Yes.

Q. Now, Mr. Patterson, you had, I believe before we withdrew you from the stand, testified that you had a conversation in the rear of Tatsuda's grocery store some time in July of 1950 with John Roger Lamb; is that correct?

A. That is correct. [193]

Q. Now, I will ask you the following question. Wait a minute. Who was present during that conversation?

A. Bill Tatsuda, John Lamb and I.

Q. And you have already testified as to how you came into the conversation, by being called into the rear of the store; is that correct?

A. That is correct.

Q. Now, at that time and place and in the presence of yourself and Bill Tatsuda did John Lamb make substantially the following statements, that he was going to be the stream patrolman for the Fish and Wildlife at Boca de Quadra again this year; had just gotten his appointment? Did he make that statement?

A. Words to that effect.

Mr. Baskin: Your Honor, I object to that and ask that it be stricken, that the question does not

(Testimony of Joseph C. Patterson.)

meet the impeaching form as required by the statute.

The Court: Well, you mean that it has to be in the identical language?

Mr. Baskin: Well, that is what you have stated, that is what you have ruled.

The Court: Well, if I said identical, I meant substantially identical.

Mr. Baskin: He hasn't sufficiently fixed the time and place that this conversation occurred with this witness. [194]

The Court: The statute requires that the conversation be identified by time, place, circumstances and persons present so that there won't be any mistake on the part of the impeaching witness or the witness sought to be impeached that it was the same conversation in each instance. With that in mind, it is sufficient that it be substantially—it meets the requirements if it is substantially identical or if it is in substance and effect what the witness was questioned about, but it doesn't seem to me that you have fixed the time here. You fixed the time in the impeaching question asked Lamb, July 10th.

Mr. Kay: Didn't I say, "July 10th or July 18th on the occasion of one of your visits to Ketchikan from Boca de Quadra"?

The Court: Well, it may be. All I have is July 10th. But, anyway, whatever it was by which you called it to the attention of Lamb, it should be embodied in the question to this defendant.

Mr. Kay: All right.

(Testimony of Joseph C. Patterson.)

The Court: So far as the time and place are concerned.

Q. Mr. Patterson, did you, on or about July 10th or 18th of the year 1950 on the occasion of one of the visits of John Roger Lamb to the City of Ketchikan from his duties as stream watchman at Boca de Quadra, in Tatsuda's grocery [195] store in the City of Ketchikan, Territory of Alaska, in the presence of yourself, John Lamb and Bill Tatsuda, did John Roger Lamb at that time and place and in the presence of those persons make substantially the statement that "I am going to be the stream patrolman for the Fish and Wildlife Service at Boca de Quadra again this year. I have just got my appointment"? Did John Lamb say substantially that there at that time? A. Yes.

Q. At the same time and place and in the presence of the same persons and during the same conversation, did John Roger Lamb make substantially the following statement that "There is a lot of money to be made out there this year" that "I made a lot of money out there last year"? Did he say that at that time and place? A. Yes.

Q. And at the same time and place and in the presence of the same persons and in the same conversation, did he make substantially the following statement that "I am only going to work with one or two boats this year instead of letting everyone in like I did last year"? Did he say that at that time and place? A. Yes.

Q. And did he at the same time and place and

(Testimony of Joseph C. Patterson.)

in the presence of the same persons and in the same conversation make [196] substantially the following statement: "Why don't you fellows bring the Rolling Wave down there and fish the stream, and we will all make some money"; did he make substantially that statement? A. Yes.

Q. And did he at the same time and place and in the presence of the same persons and in the same conversation suggest substantially the following that "You bring the Rolling Wave down there before the season and get in on the early run of sockeyes," or words to that effect? A. Yes.

Q. And did he at the same time and place and in the presence of the same persons and in the same conversation say substantially the following: "You don't have to worry any about getting caught. It will all be fixed," or "I have it all fixed," or words to that effect? Did he say that at that time and place? A. Yes, he did.

Q. Now, Joe, after that conversation—well, let me ask you this. Was any definite deal made or arranged between yourself and Lamb or yourself, Tatsuda and Lamb at that time and place and during that conversation with John Lamb?

A. No.

Q. Now, at that time were you engaged in preparing the Rolling Wave to fish during the season of 1950? [197] A. I was.

Q. And did you have the boat ready to fish at that time, or what was the stage of your preparations; do you recall, Joe?

(Testimony of Joseph C. Patterson.)

A. No; the boat wasn't ready to fish. It had a fire on it.

Q. And did you finally get the boat ready and leave Ketchikan preparatory to fishing?

Mr. Baskin: Your Honor, I object to this questioning. It is all leading. The last question was leading, and this one is leading, and I object to them and ask they be stricken.

The Court: Well, but aren't they on more or less collateral issues; you don't think that it goes to any vital issues in this case?

Mr. Kay: You don't deny he went fishing, do you?

Mr. Baskin: But they are still leading, your Honor, and he can lead him all around if he wants to, but I am objecting to it. The questions are supposed to be in the proper form.

The Court: Well, unless they are preliminary or introductory and even on collateral matters why leading questions may be permitted. Objection overruled. You may answer.

A. We had the boat ready to fish August 12th.

Q. After you got the boat ready, do you recall who, if anyone, you had as crew? [198]

A. Yes; I had the crew ready on the 13th.

Q. Would you mind stating who the crew members were?

A. Fred Milton, Carl Mossberger, Allen Churchill, Bill Cummings.

Q. Which one of those, if any of them, was the skipper of the craft, Joe? A. Fred Milton.

(Testimony of Joseph C. Patterson.)

Q. After you had the boat ready on August 13th, what, if anything, did you do?

A. Put the groceries aboard and got ready to go. That is all.

Q. Did you depart the Port of Ketchikan en route to somewhere fishing on some date?

A. August 14th about noon.

Q. And where did you go?

A. We went to the Boca de Quadra.

Q. Now, into what general area in Boca de Quadra did you go? A. Near Cygnet Island.

Q. Now, as you—that was on August 14th that you left Ketchikan and departed to Boca de Quadra? A. That is right.

Q. Now, as you approached or rounded an island, near Cygnet Island, did anything happen?

A. John Lamb came out and met us at the boat.

Q. About how far did he run out to meet you, if any distance?

A. About a mile, a mile and a half. [199]

Q. What was he riding in when he came out to meet you? A. The outboard and skiff.

Q. And what, if anything, happened then?

A. John Lamb came aboard the boat and tied onto us, and we talked aboard the boat and went over by his boat and tied up about a mile or mile and a half from where he originally came aboard.

Q. John Lamb came aboard the boat, and you towed him over to the vicinity of his boat; is that correct? A. Yes.

(Testimony of Joseph C. Patterson.)

Q. And did any conversation occur with John Lamb during the time that he was aboard the boat there as you were towing him over to the island?

A. Yes.

Q. Could you state to the best of your recollection where the members of the crew were during this conversation?

A. I think there was one or two crew members on deck and possibly one asleep, and the skipper was up on top of the pilothouse.

Q. And was this conversation between yourself and John Lamb primarily?

A. Well, I imagine it was primarily between us, but I think Carl Mossberger heard part of the conversation.

Q. All right. Will you state to the jury, please, to the best of your recollection, what was said in this conversation [200] with John Lamb at that time?

Mr. Baskin: Your Honor, I object to that as hearsay and, if it is attempting to impeach the witness John Roger Lamb, it is not in the proper form, and the proper predication has not been laid for it.

Mr. Kay: Hearsay, your Honor?

The Court: I don't think that that objection is available.

Mr. Kay: And I am not attempting to impeach the witness Lamb. I didn't ask the witness Lamb any impeaching questions, as I recall, about this conversation.

The Court: Well, if you didn't ask him about this conversation——

(Testimony of Joseph C. Patterson.)

Mr. Kay: I asked if he had any conversation on August 14th, and he said he had none, none whatever. I couldn't ask him anything else other than that.

The Court: Of course, you could have called the conversation to his attention, but since it is not so very long ago I think it may be presumed that he wouldn't have forgotten it. Objection overruled.

Q. You can state substantially to the jury, Joe, just what conversation took place between yourself and John Roger Lamb on the occasion on August 14th while he was towing you into, while you were towing him, rather, into the anchorage. [201]

A. John Lamb said there was quite a few fish up in the creek, a lot of money to be made, and he had everything fixed if we would go up and catch them, so he repeated this with other suggestions during this about a mile or a mile and a half run, and we tied up, and all of the crew, we talked about it to them, and I didn't want to do it. The crew didn't want to do it. So we told him no; that was about all of it.

Q. Now, at that time after you pulled over to the anchorage what, if anything, did John Lamb do, Joe, to the best of your recollection?

A. After we anchored and had an evening meal, why, John Lamb came back aboard the boat.

Q. First he left the boat, I take it?

A. Yes; he left the boat.

Q. Where did he go?

A. He went back to his boat.

Q. Was his boat anchored nearby?

(Testimony of Joseph C. Patterson.)

A. Nearby our boat.

Q. Then what happened?

A. Then after the evening meal he came back to our boat, and three of our crew members had gone for a ride in the skiff. They went up the creek to look at the fish and, while they were gone, why, John Lamb and I talked again, talked about the possibilities of making money. [202]

Q. Now, where did this conversation occur, and who was present, if you recall, during any part of the conversation?

A. This was in the fo'c'sle. I was washing dishes.

Q. And was any other crew member or any other person present during any part of the conversation?

A. Carl Mossberger came down part of the time.

Q. Now, to the best of your recollection, Joe, will you state to the jury substantially what John Lamb said to you and what you said to him during the course of this conversation that evening after dinner aboard the boat?

A. Well, this conversation in the evening was about the same as before; how many fish there; how he had things fixed; and how much money could be made.

Q. Do you recall anything else that was said?

A. No, I don't.

Q. To refresh your recollection, do you recall whether he said anything about having made

(Testimony of Joseph C. Patterson)

enough money to buy a house in Washington, or words to that effect? A. Oh, yes, he did.

Mr. Baskin: Well, your Honor, it is immaterial to this case, and all that part of it is immaterial as to what he said. It doesn't relate to this bribery here. I object to that part of the conversation.

The Court: Well, I think the objection will have to be overruled. It isn't whether some particular statement is [203] material or not, it is what was said in the conversation between them that led up to this. It may be that some of the statements would be immaterial and might be even irrelevant, but, if it is part of the conversation, why, it may be testified to.

Q. To refresh your recollection further, did he say anything about having made enough money selling stolen fish the previous year to buy a troller; do you recall that?

A. Yes, I remember now. He said that he had made enough money last year selling fish out of the creek to pay all his bills, buy a troller and a seven-thousand-dollar home in Washington.

Q. And I don't know whether it was in this conversation or not, but you will know, to refresh your recollection further, did he say anything about any other agents in the area at that time?

A. Oh, yes. I said a while ago, he said he had everything fixed. He had the agents fixed, he said. He said there was two guys on a Chris-Craft and he had them fixed.

(Testimony of Joseph C. Patterson)

Q. Now, following that conversation what did John Roger Lamb do, if anything? Did he remain aboard the Chris-Craft, or what happened?

A. Well, he went back to his boat, and I didn't see him any more.

Q. All right. Now, then, what happened on the following day, [204] if you can recall? Did you remain in that area, or what did you do?

A. The following day about four o'clock we pulled anchor and went to Point Alva, I believe, or Lucky Cove and fished there all day.

Q. Now, en route out of the Boca de Quadra, that is about four o'clock in the morning, did anything happen?

A. Yes. Two Fish and Wildlife agents came aboard, but I didn't see those Fish and Wildlife agents because I was cooking. I didn't see them.

Q. You just know that they did come aboard?

A. The crew told me that they were aboard.

Q. I see. Well, then, that is hearsay as far as you are concerned. You didn't talk to them then; is that correct? A. No.

Q. And where was the Rolling Wave on August 15th? Have you answered that question already?

A. I told you where we fished August 15th. The evening of August 15th we went back to Boca de Quadra, I believe.

Q. Now, did you have—I mean, did you see John Roger Lamb again on the 15th or on the 16th of August, 1950? A. Yes.

Q. And where did you see him?

(Testimony of Joseph C. Patterson.)

A. He came aboard the boat.

Q. Was anyone with him on that [205] occasion?

A. On that occasion John Lamb and Warner and—there was another man with Warner on the boat. I didn't see him. I saw a man but I didn't know who he was.

Q. Do you recall whether they boarded the boat or whether they remained aboard the vessel on which they approached the Rolling Wave?

A. They tied to the Rolling Wave. John Lamb came aboard, and he introduced me to Warner, and Warner was on the front of the, on the fo'c'sle of the Chris-Craft on his hands and knees talking to us.

Q. Now, what, if anything, did John Lamb say to you or you say to him on this occasion there in the Boca de Quadra on August 15th or 16th, 1950, when the Chris-Craft was tied up to the Rolling Wave, if you can recall?

A. John said, "I just wanted to prove to you that everything is fixed," and after he introduced me to him he said, "There are a lot of fish up there tonight. If you guys want to go up there and fish," he says, "there is nothing to worry about. We have the light signal all figured out," and Warner said, "Yes," and that is the conversation; that is about all there was to it.

Q. Now, did anything happen in connection with John Roger Lamb and the Rolling Wave dur-

(Testimony of Joseph C. Patterson.)

ing the afternoon of the 16th of August, 1950, to the best of your recollection, Joe?

A. Yes. He came aboard. [206]

Q. He came aboard again that day, to the best of your recollection? A. Yes.

Q. And did you have any conversation with him at that time?

A. Yes. He wanted us to go in the creek again.

Q. And what, if anything, did he say to you at that time and you say to him, just the best you can recall for the jury?

A. About the same conversation. "We have got things fixed. Are you going to fish or not? If you are not going to fish, I am going to get somebody else." And that is the afternoon we decided to go and fish in the creek.

Q. Did you thereafter—well, was anything said about the price either at that time or in any other conversation?

A. Yes. He said one hundred dollars a thousand, and I agreed to it.

Q. And did you thereafter proceed into the closed area of the Boca de Quadra and there take fish? A. I did.

Q. And upon how many occasions, if you can recall, Joe, did you so fish? A. Three times.

Q. And did you in accordance with your agreement with Lamb pay him one hundred dollars a thousand for the fish so taken?

A. I did. [207]

(Testimony of Joseph C. Patterson.)

Q. And upon which occasions did you do that?

A. I fished on the night of the 16th and I paid him on the 17th, two hundred and eighty dollars. I fished on the night of the 17th and I paid him on the 18th, two hundred and fifty dollars. I didn't fish on August 18th, but I did on the 19th and I paid him Monday the 21st, twenty dollars.

Q. Joe, have you ever fished prior to the season of 1950? A. No; not commercially.

Q. Commercial fishing, I mean? A. No.

Q. Prior to your going out or prior to your meeting John Lamb, did you ever have any intentions of fishing illegally or bribing a stream watchman?

A. I didn't even know what illegal fishing was until this year.

Mr. Baskin: Your Honor, I object to that as a self-serving statement, and that the jury be instructed not to consider it.

Mr. Kay: May it please the Court, if I could be heard on that. One of the elements of the alleged entrapment is whether or not the defendant was a hitherto innocent person having no intention of committing a crime until lured into it by a Government official.

The Court: Of course, the answer wasn't responsive [208] to the question, but necessarily in a case of this kind a lot of the statements that are made will be in the nature of self-serving statements. Objection overruled.

Mr. Kay: Pardon me.

(Testimony of Joseph C. Patterson.)

The Court: Of course, you knew what the limits of legal fishing were when you did go out to fish?

A. Yes, I did then; yes.

Mr. Kay: You may cross-examine.

Cross-Examination

By Mr. Baskin:

Q. Joe, what day was it that you fished out at Boca de Quadra within the area closed to commercial fishing, the first day? A. 16th of August.

Q. August? A. Yes.

Q. And where did you fish?

A. In Mink Arm in the creek.

Q. You mean up in the creek? Of what creek, do you know? Was that Humpback Creek?

A. I wouldn't even say that I know what creek it was.

Q. You do know it was within an area that was closed to commercial fishing?

A. Yes, I do know that; yes. [209]

Q. And you were aboard the Rolling Wave at that time? A. That is right.

Q. And who were the crew that was on the Rolling Wave at the time?

A. Fred Milton, Bill Cummings, Allen Churchill and Carl Mossberger.

Q. And the whole boat and all of the crew participated in that illegal fishing; isn't that right?

A. That is right.

Q. When did you pay John Roger Lamb for fishing illegally in that stream?

(Testimony of Joseph C. Patterson.)

A. I fished illegally on August 16th. I paid John on the 17th after I had hold the fish.

Q. And how much did you pay him?

A. Two hundred and eighty dollars.

Q. How many fish did you catch?

A. I don't remember how many fish there was.

Q. Well, you were paying him, weren't you, one hundred dollars per thousand?

A. Yes, I was paying him one hundred dollars per thousand.

Q. Well, how many did you catch then?

A. I think we have the fish ticket right there. We can know exactly.

Q. Well, just say how many approximately.

Mr. Kay: We can supply this. [210]

Mr. Baskin: I am asking the witness. He should know how many he caught.

Q. You can say about how many you caught.

A. I would say about three thousand—I don't know.

Mr. Kay: I object on the ground that is not the best evidence.

Mr. Baskin: He can testify as to what he knows from his own mind.

The Court: It is just a matter of computation if he paid at the rate of one hundred dollars a thousand. A. We have the ticket here.

Q. I am asking you. I am not asking for the tickets.

(Testimony of Joseph C. Patterson.)

The Court: It is not subject to the best evidence rule. Anyhow, it is just a collateral matter, the amount.

Q. You caught about three thousand, you say, and then when did you fish again?

A. On August 17th.

Q. You mean the same day you paid him the bribe?

A. Come in that afternoon, paid him the bribe, and went on in and fished that night, and sold the fish the next day, and came back on August 18th and paid him for the fish we caught on the 17th.

Q. And how many fish did you catch on the 17th?

A. I gave him two hundred and fifty dollars.

Q. Then you were still paying him one hundred dollars per [211] thousand?

A. One hundred dollars a thousand.

Q. So how many fish did you catch? That would be about three thousand fish again, wouldn't it?

A. A little less than three thousand.

Q. About twenty-five hundred?

A. Something around there; I don't know.

Q. And what day did you pay him that, the two hundred and fifty dollars?

A. I paid him on Friday the 18th.

Q. That was two hundred and fifty dollars?

A. That is right.

Q. And then when did you fish again?

A. On Saturday the 19th.

(Testimony of Joseph C. Patterson.)

Q. How many did you catch?

A. Two hundred and fifty-six; I remember that.

Q. Two hundred and fifty-six fish. And how much did you pay Lamb? A. Twenty dollars.

Q. Then when did you pay Lamb then?

A. I paid him on Monday the 21st.

Q. Then in total you gave him two hundred and eighty dollars on the 17th, and on the 18th two hundred and fifty, and on the 21st twenty dollars?

A. Five hundred and fifty dollars. [212]

Q. And that was to pay Lamb for permitting you and your crew and vessel to fish illegally in the closed waters of Boca de Quadra; is that correct?

A. I gave him the money for letting me go and catch the fish.

Q. Then answer the question. You paid him the money for permitting you to fish in the waters closed to commercial fishing; is that right? Answer that yes or no. A. Yes; yes.

Q. Now, then, you knew that it was against the law to fish illegally out there, didn't you, when you fished? A. Certainly did.

Q. And you went ahead and fished?

A. Yes.

Q. And you also know that it is a violation of the law to pay a man a bribe to permit you to fish; didn't you? A. Yes.

Q. And you went ahead and paid the bribe?

A. Yes.

Q. Did anybody force you to do that?

A. Not that I know of.

(Testimony of Joseph C. Patterson.)

Q. Did anybody force you to pay the money to Lamb as you described? A. No.

Mr. Kay: I object to that question as irrelevant, immaterial and incompetent. The question of force does not [213] enter into the question of entrapment or into any part of this case whatever, not material to the Government's case, and it is not material to our case. Obviously, he was not forced at gun-point in there.

The Court: Well, it may not be a requirement so far as entrapment is concerned, but nevertheless it is a proper cross-examination. He can't make anything of it as a matter of law or anything of that kind, but it is proper cross-examination.

Mr. Kay: Well, doesn't cross-examination have to be somehow relevant to some of the issues in the case?

The Court: It is relevant, except that he wouldn't have to be forced into it; he could be coerced into it or persuaded into it.

Mr. Kay: Correct. That is why I say that force is no element because force is not an element of their case, bribery; and it is not an element of our defense.

The Court: That may be true, but nevertheless it is not improper cross-examination. Objection is overruled.

Q. Then you paid him voluntarily?

A. That is right.

Q. And you fished voluntarily?

A. That is right.

(Testimony of Joseph C. Patterson.)

Q. Now, you testified a while ago with relation to a conversation with Lamb on or about the, I believe you said the [214] 10th of July or 18th of July. Now, what day was it that you had that conversation with him?

A. You want to know whether it was the 10th or the 18th?

Q. That is right. A. I don't know.

Q. You don't know. And he told you that he had just been appointed as Fish and Wildlife agent; isn't that what you said?

A. He told me he had been appointed Fish and Wildlife agent.

Q. That wasn't the question. The question was asked you, didn't he say—now, isn't that what you said? That was the impeaching question that was asked you? Now, what did you say?

A. That he had just been appointed?

Q. That is the question that was asked you; yes.

Mr. Kay: Well, now, I object to that as a statement on his own behalf. I don't recall that I asked a question in that precise form. I would like to check the record.

The Court: It is my recollection that you asked it in that form.

Mr. Baskin: That is exactly what he said. I know what he said.

Q. Didn't he ask you the question and didn't you say that he had just been appointed an agent for the Fish and Wildlife Service? [215]

A. Yes.

(Testimony of Joseph C. Patterson.)

Q. And you say that was on July 10th?

A. That is right.

Q. It wasn't the 18th?

A. The 10th or 18th; one; I don't know.

Q. Well, which one was it? You know; you were there the eight days apart. Which day was it?

A. I don't know.

Q. Well, you know it is one of them, don't you?

A. I think it is one of them.

Q. And you know also that Lamb had been a Fish and Wildlife agent for over a month, don't you?

A. I didn't know it at that time.

Q. Well, you know it now, don't you?

A. Sure, I know it now.

Q. And didn't you testify that you had met him during June of 1950; didn't you say that you saw him during June of 1950 on your direct examination?

A. Possibly I did see him.

Q. Then you knew he was an agent before, didn't you, before July 10th?

A. I guess I did know he was an agent before then. I don't remember.

Q. You did know he was an agent for the Fish and Wildlife before July 10th then, didn't [216] you?

A. I guess I did.

Q. Why don't you say that when I ask you?

A. I am not positive.

Q. Now, then, you stated with relation to this conversation that Lamb had, that you had with him on several occasions, and he told you, didn't he say,

(Testimony of Joseph C. Patterson.)

or did not you say that he said that he had everything fixed? A. He did.

Q. Then he didn't tell you that he was going to arrest you, did he? A. No.

Q. In other words, he told you that he didn't intend to arrest you, or left you with that impression? A. He did.

Q. He at no time told you that he was going to arrest you? A. No.

Q. And that he had it fixed so that you wouldn't be arrested; isn't that right? A. That is true.

Q. And didn't he say, or in words to the effect that you wouldn't be arrested for illegal fishing in that area or wouldn't be prosecuted for illegal fishing in the Boca de Quadra?

A. He said there wasn't much chance of being caught because he had it fixed. [217]

Q. Now, Joe, I ask you, you are also known as Joe Patterson, aren't you? A. Yes.

Q. And I ask you if you are the same Joe Patterson in the case of the United States of America vs. Joe Patterson in the United States Commissioner's Court at Ketchikan, Alaska, on or about December 29, 1948? A. 1948?

Q. Yes.

Mr. Kay: I don't know what the United States Attorney intends but, if he intends what I think he does, he is going about it the wrong way according to the statutes of the Territory of Alaska, in my impression at least.

(Testimony of Joseph C. Patterson.)

(Testimony of Joseph C. Patterson.)

The Court: What do you think the correct way is?

Mr. Kay: I would like to know.

Mr. Baskin: Well, I can show him pretty quick.

The Court: Well, there is nothing the Court can rule on at the present time so——

Mr. Kay: Well, I object to the question as improper.

The Court: Objection overruled.

Mr. Kay: Prejudicial to the defendant.

The Court: Well, if it doesn't relate to a conviction, it certainly would be prejudicial, but I don't believe counsel is asking anything else except about the conviction.

Mr. Kay: Why doesn't he ask it in the proper form? [218]

The Court: Well, what is the proper form?

Mr. Kay: "Have you ever been convicted of a crime?"

The Court: But the Court of Appeals ruled otherwise. You can proceed in either way. You can start out with the judgment roll, and it is up to the prosecutor to determine which way he shall proceed.

Q. Were you the same Joe Patterson in the case of the United States of America vs. Joe Patterson in the United States Commissioner's Court at Ketchikan, Alaska, on or about December 29, 1948?

A. Yes, I guess that is the case.

Mr. Baskin: Your Honor, I offer in evidence the certified copy of the judgment and conviction

(Testimony of Joseph C. Patterson.)
of Joseph Patterson on December 29, 1948, in the United States Commissioner's Court at Ketchikan, Alaska.

The Court: Any objection?

Mr. Kay: I object to it until I have seen it. No objection.

The Court: It may be admitted and marked as an exhibit.

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 3.)

(Thereupon the jury was duly admonished and Court recessed until 2:00 o'clock p.m., October 24, 1950, reconvening as per recess, with all parties present as heretofore and [219] the jury all present in the box; whereupon the defendant, Joseph C. Patterson, resumed the witness stand, and the Cross-Examination by Mr. Baskin was continued as follows:)

Mr. Baskin: May I see that Government Exhibit? Ladies and gentlemen of the jury, I have here a certified copy of the judgment and conviction of Joe Patterson in the United States Commissioner's Court, Ketchikan, Alaska, on or about December 29, 1948, in which he was convicted in Counts 1 to 7 for selling intoxicating liquor without a Territorial license, and in Count 8 he was convicted for maintaining a common and public nuisance. On each of those eight counts he was fined two hundred dollars, or a total of sixteen hundred dollars. For the record I think I should

(Testimony of Joseph C. Patterson.)

state that the judgment I just read is Plaintiff's Exhibit No. 3.

Q. Joe, were you the same Joseph Patterson in the City Magistrate's Court at Ketchikan, Alaska, on September 24, 1948, in case No. 4902?

A. I think that would be the date.

Mr. Baskin: Your Honor, I would like to offer in evidence the original judgment of conviction of Joseph Patterson on September 28, 1948, in the City Magistrate's Court at Ketchikan, Alaska. Any objection?

Mr. Kay: I would like to see it. I don't know whether that is a properly certified and authenticated copy, but I have no objection. [220]

Mr. Baskin: Very well.

The Court: It may be admitted.

Mr. Baskin: Will you mark that, please?

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 4.

Mr. Baskin: Ladies and gentlemen of the jury, Plaintiff's Exhibit No. 4 reads as follows: "Ketchikan, Alaska. Police Department. September 24, 1948. Name: Joseph Patterson. Arrested by Lang. Charge: Operating a gambling game. Date of Trial, September 24, 1948; guilty. Bail, if any, \$100.00. Sentence: \$100.00 and 30 days suspended subject to good behavior." That shows the fine was paid on September 24, 1948; signed by Edward F. Ginger, Magistrate.

Q. Now, Mr. Patterson, were you the same Joe

(Testimony of Joseph C. Patterson.)

Patterson, were you the Joe Patterson in the City Magistrate's Court at Ketchikan, Alaska, on or about September 24, 1948, in case No. 4903?

A. I don't remember. I thought it was all one case, that other one.

Q. Well, just tell the jury were you or were you not the Joe Patterson on that same date, September 24, 1948, in the City Magistrate's Court at Ketchikan, Alaska, in cause No. 4903?

A. I don't know.

Q. Do you deny that you were? [221]

A. No, I don't deny it, but I am not sure.

The Court: Why don't you identify it by something else than number to refresh his memory?

A. I wouldn't know the numbers.

Q. Were you also charged on that day of September 24, 1948, of selling and serving liquor without a license?

A. That was the same charge, I believe. I don't understand it. It was two charges?

Q. Two charges. And one was operating a gambling game; that is the one I just read to the jury.

A. That is true.

Q. And then there was another charge of selling liquor and serving liquor without a license; is that right?

A. I thought that was a Territorial and not in the City Magistrate's Court.

Q. Well, I am asking you now. It is your testimony. I have a record here of it, and I am asking you, were you the defendant, or were you the Joe

(Testimony of Joseph C. Patterson.)

Patterson on or about September 24, 1948, in the City Magistrate's Court at Ketchikan, Alaska, in No. 4903 charged with selling and serving liquor without a license; were you that same Joe Patterson as mentioned in that case?

A. I was charged with gambling and with selling liquor without a license, but the case number I don't remember that.

Q. Very well; then you admit then that you were the same Joe [222] Patterson as I just described? A. Oh, yes, I do.

Q. Very well.

Mr. Baskin: Your Honor, I would like to introduce the original record of the judgment and conviction in that case.

Mr. Kay: I believe—I would appreciate it, if Mr. Baskin would, when he reads these exhibits, read all of them.

Mr. Baskin: Very well. I read all of the other one.

Mr. Kay: I am sorry. I don't believe you did.

Mr. Baskin: Will you mark this as an exhibit please?

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 5.

Mr. Baskin: Ladies and gentlemen of the jury, Plaintiff's Exhibit No. 5 reads as follows: "Ketchikan, Alaska; Police Department; No. 4903; September 24, 1948. Name: Joe Patterson. Arrested by Lang. Charge: Selling and serving liquor without a license. Date of trial: September 24, 1948. Plea:

(Testimony of Joseph C. Patterson.)

Guilty. Verdict: Guilty. Bail if any and amount, \$100.00. Sentence: \$100.00 and 30 days suspended subject to good behavior. Date fine paid or bail forfeited, September 24, 1948. Amount, \$100.00." Signed by Edward F. Ginger, Magistrate.

Q. Now, Mr. Patterson, tell the jury whether or not you were convicted of a crime under the name of Joseph Cullen Patterson [223] in the Police Court at San Diego, California, on or about October 15, 1937?

A. If you will refresh my memory on the particular one, I will tell you if I can.

Q. That was for battery and disorderly conduct?

A. I wouldn't say it was that particular date, but I possibly was.

Q. Then do you admit that you were convicted on or about October 15, 1937?

The Court: The date is immaterial. Just ask him if he has been convicted of the crime named.

Q. Well, were you convicted then of the crime that I just described? A. Yes.

Q. Now, tell the jury whether or not you were convicted in the Police Court at San Diego, California, under the name of Joseph Cullen Patterson on or about August 25, 1943, for the crime of soliciting gambling?

A. I don't remember the date. If you will read off the charges, I will admit I was convicted of all of them.

The Court: Just omit the date then.

Mr. Baskin: Very well.

(Testimony of Joseph C. Patterson.)

Q. The charge was soliciting gambling. Were you convicted in that Court as I have stated?

A. Yes. [224]

Q. You stated on your direct examination that you operate the 400 Club; didn't you?

A. That is right.

Q. Where is that club located?

A. 400 Stedman Street.

Q. In Ketchikan, Alaska?

A. That is right.

Q. What kind of a club is that?

Mr. Kay: I object to that as immaterial, irrelevant and incompetent, your Honor.

Mr. Baskin: Your Honor, it is cross-examination.

The Court: His occupation is never immaterial. Objection overruled.

Q. What kind of a club is that?

A. It is just the name of it; 400 Club.

Q. Well, what is the club then?

A. It is a restaurant.

Q. What do you do as a restaurant? How do you operate it as a restaurant?

A. Serve food.

Q. How long have you operated it as a restaurant?
A. Since October of 1947, I believe.

Q. Have you ever operated it as any other kind of business?

A. Sure. I have been convicted of selling liquor without a license there. [225]

(Testimony of Joseph C. Patterson.)

Q. And were you convicted of operating a gambling game there? A. Yes.

Q. Then you operate that also as a gambling house; is that right; or a place to gamble?

A. We gamble.

Q. And you so operated that 400 Club as such; is that right? A. That is right.

Q. And you have been operating it as such since 1947?

A. In October or September; I think it was October, 1947.

Q. Up to the present time?

A. Not to the present time, no; a couple months ago.

Q. Up until a couple months ago then.

Mr. Baskin: No further examination.

Redirect Examination

By Mr. Kay:

Q. Joe, after those convictions for these misdemeanors back in 1937 or 1938—where did those convictions occur? A. San Diego, California.

Q. Between that time and the time you came to Ketchikan, Alaska, where were you, Joe?

Mr. Baskin: Your Honor, I object to that. That is immaterial and irrelevant to the issues in this case.

Mr. Kay: I believe the occupation and the background of the defendant is something— [226]

Mr. Baskin: It is not. I was impeaching the witness and—

(Testimony of Joseph C. Patterson.)

Mr. Kay: Impeaching? By that kind of evidence? That certainly is incompetent. If that was the purpose of your examination. I object to it and ask that it be stricken.

The Court: Well, of course, that is not the purpose. It is merely to show the defendant's background so that the jury may appraise his testimony.

Mr. Kay: Yes, sir; precisely.

Q. Well, where were you?

Mr. Baskin: Your Honor, I am objecting to that. It is immaterial and irrelevant as to where he was.

The Court: I think the question is too indefinite and that the objection should be sustained.

Q. Where did you go between your last conviction in 1943 and the——

Mr. Baskin: Your Honor, I object to that.

Q. And the time you arrived in Ketchikan, Alaska?

The Court: Objection sustained.

Q. Isn't it a fact that you served in the——

Mr. Baskin: Your Honor, I object to that.

Mr. Kay: Well, what in the world—I haven't asked the question.

Mr. Baskin: We know what you are going to ask.

A. Army. [227]

The Court: Well, I assume you are asking him about military service which is improper. Objection sustained.

Q. Mr. Baskin asked on his cross-examination if

(Testimony of Joseph C. Patterson.)

you were forced by John Roger Lamb to go out to the Boca de Quadra this summer and engage in illegal fishing. Do you recall him asking you that?

A. Yes.

Q. And I believe your answer was that you were not forced; is that correct?

A. I was not forced.

Q. Were you persuaded and solicited by John Roger Lamb to go out to Boca de Quadra this summer and fish illegally in the closed area?

A. Yes.

Q. And were you so solicited by John Roger Lamb in the presence of Richard Warner, another Fish and Wildlife agent?

A. Yes.

Mr. Baskin: Your Honor, I object to that as being leading questions. It is certainly one of the crucial questions here, and I object to both of them as leading and ask that the jury disregard it.

The Court: Well, I thought he testified to all that, and of course it is just a recital of his testimony then which would not make it objectionable.

Mr. Baskin: Well, I object to it then as repetition. [228]

Mr. Kay: No further questions.

Mr. Baskin: No further examination.

(Witness excused.)

WILLIAM N. TATSUDA

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Will you state your name please, Mr. Tatsuda? A. William N. Tatsuda.

Q. And where do you live, Bill?

A. I live at 525 Grant Street.

Q. Is that in the City of Ketchikan?

A. Yes.

Q. Territory of Alaska? A. Yes.

Q. And how long have you lived here in Ketchikan, Mr. Tatsuda?

A. Well, all my life except for the time I was in the Army and out of the country.

Q. Well, now, Mr. Tatsuda, are you acquainted with the defendant, here, Joseph C. Patterson?

A. Yes, I am.

Q. Are you acquainted with a person here in town by the name of John Roger Lamb?

A. Yes, I am. [229]

Q. How long have you known John Roger Lamb, Mr. Tatsuda?

A. I would say about three years.

Q. And how long have you known Joe Patterson? A. About the same, about three years.

Q. What has been the nature of your acquaintanceship with John Roger Lamb?

A. Well, he trades in our store; he has for about

(Testimony of William N. Tatsuda.)

the last two years, and that is about the extent, and then conversation I had with him.

Q. Well, now, you say he trades at your store. Are you engaged in the grocery business here in town? A. That is right.

Q. Calling your attention to the month of November or December in the fall of 1949, last year that is, did you have any conversation with John Roger Lamb about fishing in the, about fishing out at Boca de Quadra during the summer of 1950?

Mr. Baskin: May it please the Court, just a moment, I object to that. That, as I understand the issues of this case, does not relate, has not been connected up in any way with the defendant, and further there certainly was no predicate laid for the asking of an impeaching question of John Roger Lamb.

Mr. Kay: I didn't claim that there was any impeaching question asked about that [230] conversation.

Mr. Baskin: Well, he should connect up some way this conversation with the defendant and in this case.

The Court: Will you repeat the question, Miss Maynard?

Court Reporter: "Q. Calling your attention to the month of November or December in the fall of 1949, last year that is, did you have any conversation with John Roger Lamb about fishing in the, about fishing out at Boca de Quadra during the summer of 1950?"

The Court: Well, it isn't the purpose to connect

(Testimony of William N. Tatsuda.)

the defendant up with it exactly, as I understand it. It is merely to show the disposition of the witness Lamb, and the only objection that could be made to it perhaps is——

Mr. Baskin: What he means is that he is just impeaching the witness Lamb? If so, he certainly didn't lay the predicate.

The Court: Well, no, it isn't impeaching the witness Lamb. It is showing his disposition to do what is claimed he did. Now, as I say, the only objection that could be made to that is that it is too remote, and I don't think it is too remote if it is last November or December. Objection is overruled.

Mr. Baskin: I, of course, submit to the ruling of the Court.

Q. You may answer the question, Mr. [231] Tatsuda.

A. Well, I don't understand that exactly; what you meant by fishing in 1950.

Q. During the coming season. Did he discuss with you at that time anything concerning fishing during the coming season?

A. The only thing he said to me at that time was that if he got the same job next year that he would work it in a different manner.

Q. Did he then discuss with you in the same conversation at the same time and place, with reference to the statement that you have just made, same thing that he had been doing during the summer, the fishing season of 1949?

(Testimony of William N. Tatsuda.)

A. Well, I understood from what he said that he had been selling fish out of Boca de Quadra that summer of 1949.

Mr. Baskin: Your Honor, I object to that as being too remote and irrelevant and immaterial.

The Court: I am inclined to think that the fact that he was selling fish, if he was selling fish, in 1949 would not have a tendency to prove that he would induce or entrap somebody else in 1950.

Mr. Kay: Coupled with what has just been said, with what this witness said previously, that is— may I ask the witness to repeat what he then followed up by saying?

The Court: Yes; you may pursue it a little further.

Q. What did he then say after he had revealed what he had been doing during 1949? [232]

A. Well, he said that there was too much talk going around now so that he was going to work it differently next season if he got the same job back. He went on to say that instead of letting anybody come in that he would just have one or two boats working in there and—

Mr. Baskin: I am going to object to that, your Honor, as being too remote. It is immaterial. It is hearsay, and it is not connected with this case, and ask the Court to instruct the jury to disregard it.

The Court: As I see it, your objection goes to the weight of the testimony rather than its admissibility. You can argue of course that the fact that the witness Lamb was willing or planned to sell

(Testimony of William N. Tatsuda.)

fish, if so or if such is the truth, is no evidence that he would coerce or induce somebody to enter into an arrangement with him, so, as I say, your objection merely goes to the weight it seems to me rather than its admissibility, and, therefore, the objection is overruled.

Q. At that time, Mr. Tatsuda, were you interested in any fishing vessel?

A. Yes. I was half owner of the Rolling Wave at that time.

Q. When had you purchased that half interest in the Rolling Wave?

A. That was in September of 1949.

Q. A month or two prior to this conversation, was it not? [233]

A. That is about right.

Q. Now, calling your attention to sometime early in the month of June, 1950, this year, did you have any conversation with John Roger Lamb on the same subject, fishing in the closed waters of the Boca de Quadra, at about that time?

A. Yes, I did.

Q. Can you tell the Court and jury, please, approximately the date that conversation occurred if you can recall?

A. Well, it was the early part of June as I remember. He came into the store and said that he was rehired again as the stream watchman at Boca de Quadra, and he went on to say that usually there is an early run of sockeyes there that starts coming in from about the middle of June, and he wanted me to send my boat down there to fish the sockeyes out of the stream.

(Testimony of William N. Tatsuda.)

Q. And at that time did he say anything about— what, if anything, did he say about the money that might be made on such a venture?

A. Well, he said—

Mr. Baskin: That is asking a leading question, and I object to it.

Mr. Kay: I said, “what, if any”—“if any.”

The Court: Objection overruled.

A. He said that if he had a boat down there last year he would have made a young fortune; I believe that is what he [234] said, a young fortune; and that this year he was trying to get a boat lined up to go down and fish the stream during that time before the regular season opened up.

Q. What, if anything, did you reply to John Roger Lamb at that time, Bill?

A. I told him that I didn't think I would be interested in that kind of a proposition, well, because it is pretty dangerous; there is no market, need to look for a market, and then our boat wasn't ready either. The boat had to be fixed up. It wasn't all ready to go out fishing.

Q. Now, do you recall anything else that was said in that conversation, or is that substantially the gist of it?

A. That is about all I can recall on that conversation.

Q. Now, calling your attention to an incident about a month later, sometime, either July 10th or 18th, sometime during the early or middle part of July, 1950, did you on or about that date or that

(Testimony of William N. Tatsuda.)

time in Tatsuda's grocery store in the City of Ketchikan in the presence of Joe Patterson, yourself, John Roger Lamb, engage in a conversation with John Roger Lamb in which he made substantially the following statements, first that he was working or was stream watchman out there for the Fish and Wildlife Service, out at Boca de Quadra; did he say substantially that?

A. Yes, he did.

Q. And did he say in the same conversation at the same time [235] and same place and in the presence of the same persons that "There is a lot of money to be made out there this year" that "I made a lot of money out there last year"? Did he say that? A. Yes, he did.

Q. And did he say, again in the same conversation, the same time, same place, same persons present, that "I am only going to work with one or two boats this year instead of letting everyone in like I did last year"? Did he say substantially that?

A. Yes, he did.

Q. And did he make substantially the following statement during the same conversation, the same time, same place and in the presence of the same persons, yourself and Joe Patterson, "Why don't you fellows bring the Rolling Wave down there and fish the creeks, and we will all make some money"? Did he say substantially that?

A. Yes, he did.

Q. And did he furthermore in the same conversation at the same time and place and in the

(Testimony of William N. Tatsuda.)

presence of yourself and Joe Patterson say that
 “There is an early run of sockeyes showing up now,
 and you could come out and get them right now”?
 Did he say substantially that?

A. That is right.

Q. Did he say at the same time and place and in
 the presence [236] of yourself and Joseph Patter-
 son in the same conversation, “You don’t have to
 worry any about getting caught. I have it all fixed”?

A. That is right.

Mr. Kay: Your witness.

Cross-Examination

By Mr. Baskin:

Q. What is your name?

A. William N. Tatsuda.

Q. And you live here in Ketchikan?

A. Yes, sir.

Q. You are part owner of the fishing vessel
 Rolling Wave? A. That is right.

Q. Who is the other owner?

A. Joseph Patterson.

Q. And then you and Joseph Patterson own it
 all; is that right? A. That is right.

Q. And then you are partners; is that right?

A. That is right.

Q. You are also partners in another business,
 aren’t you; or are you? A. No; we are not.

Q. You are not? [237] A. No.

Q. Are you a good friend of Patterson’s?

A. Yes, I am.

(Testimony of William N. Tatsuda.)

Q. How long have you been a good friend of him?
A. Two or three years.

Q. Now, you stated a moment ago, answered questions, that Lamb is supposed to have made some statements to you on or about July 10th or 18th. Now, what day was it that he made those statements to you?

A. I believe it was July 18th.

Q. You think that it was July 18th?

A. That is right.

Q. Are you sure about that?

A. Fairly certain.

Q. You are positive of it?

A. Fairly certain.

Q. You wouldn't be mistaken about it?

A. That is right.

Q. So you know it was on the 18th?

A. That is right.

Q. And now, then, how do you know it was the 18th?

A. I have got some bills here that he came into the store that day to purchase groceries; that is the time that——

Q. Will you just answer the question. You got——

Mr. Kay: He is answering the question. Let the [238] witness finish his answer, Mr. Baskin. You asked the question. Let him answer it.

Q. You know it was on the 18th?

A. That is right.

(Testimony of William N. Tatsuda.)

The Court: Counsel should address themselves to the Court at all times.

Mr. Kay: I apologize to the Court.

Q. And he made those statements to you in the presence of who?

A. Joseph Patterson and myself.

Q. And anybody else?

A. No. Someone was in the store. My dad was in the store, but I don't know whether he heard anything, but I am pretty sure he saw us in there.

Q. When did you know you were going to be a witness in this case? A. Oh, about Sunday.

Q. About Sunday? A. Yes.

Q. Have you talked with anybody about it?

A. Yes, I have.

Q. Who did you talk with? A. Mr. Kay.

Q. When? A. Sunday.

Q. Did you talk with him during the noon hour? [239] A. Yes, I did.

Q. And did he go over with you these questions he just asked? A. Yes, he did.

Q. And that is the first time you knew that you were going to be asked these questions?

A. That time when he asked me downstairs?

Q. No. I asked you, today at noon is that the first time you knew you were going to be asked these questions? Answer that. A. Yes.

Q. Yes or no? A. Yes.

Q. And your answer is "Yes"?

A. That is right.

(Testimony of William N. Tatsuda.)

Q. And you went over that with Mr. Kay today at noon? A. That is right.

Q. Have you ever been convicted of a crime?
A. No.

Q. You are interested in the outcome of this case, aren't you? A. Yes, I am.

Mr. Baskin: No further examination.

Redirect Examination

By Mr. Kay:

Q. What is your interest in the outcome of the case, Bill? [240]

A. I am part owner of the boat, and they have a suit against the boat, I understand.

Q. Would your interest in this case cause you to tell any falsehoods from the witness stand?

A. No, I wouldn't.

Q. Did I advise you that all I wanted you to do was tell the truth when I asked you these questions?

A. That is right; exactly.

Mr. Kay: That is all.

The Court: Did you tell the defendant anything about this proposal that Lamb made to you early in June?

A. Early in June? Yes, I believe I did.

The Court: What did he say?

A. He said he didn't want to have anything to do with it.

The Court: Did you make any counter proposal to Lamb, for instance that he should see somebody else, or anything of that kind?

(Testimony of William N. Tatsuda.)

A. No, I didn't.

The Court: Did you tell anybody else besides the defendant about this proposal of his?

A. No, I don't believe I did.

The Court: Well, you knew he was a dishonest officer from what he said?

A. That is right.

The Court: That is all. [241]

Mr. Baskin: I would like to ask him a question, may it please the Court.

Recross-Examination

By Mr. Baskin:

Q. After Lamb made his proposal to you did you advise the Fish and Wildlife agents of this conversation he had with you either in December, 1949, or June, 1950, or July, 1950? A. No.

Mr. Kay: I object to the question as irrelevant.

The Court: Objection overruled.

Q. Did you advise any United States Marshal or any other officer? A. No, I didn't.

Mr. Baskin: No further examination.

Redirect Examination

By Mr. Kay:

Q. You said that you were fairly sure it was July 18th? A. That is right.

Q. Do you have any reason, any tangible evidence that it was July 18th on which you talked with Lamb? A. I have.

(Testimony of William N. Tatsuda.)

Q. What is that? [242]

A. I have bills here that he came into the store to get groceries.

The Court: Well, is it material to fix the date?

Mr. Baskin: No, it isn't, your Honor, and I object to it.

Mr. Kay: Certainly it is, your Honor. Mr. Lamb denied that he was in Tatsuda's grocery store.

The Court: If he was a customer of the store, he was probably in there frequently so that, unless you claim that it is material to fix the date of this particular conversation, why——

Mr. Kay: They seem to feel it was intended to reflect on his veracity, on the veracity of the defendant, that I couldn't fix the date exactly. Now we have some evidence to fix the date, and furthermore Lamb testified, to my recollection, that he was not in the store, that his wife went in and got the groceries.

The Court: On the other hand, whether he was in there on the 10th or 18th, it seems would be immaterial, and your witness' testimony stands that he was in there on one or the other of those dates.

Mr. Kay: Yes, sir.

(Witness excused.) [243]

JIMMY K. TATSUDA

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Mr. Tatsuda, will you please state your name to the jury please? A. My name?

Q. Yes, sir. A. Jimmy K. Tatsuda.

Q. Where do you live, Mr. Tatsuda?

A. Down on Stedman Street.

Q. Is that in Ketchikan, Alaska?

A. Yes; Ketchikan, Alaska.

Q. And how long have you lived in Ketchikan, Alaska, sir? A. Forty-five years.

Q. Forty-five years? A. Yes.

Q. You are the father of William Tatsuda who just testified in this case? A. Yes.

Q. Are you also the proprietor of Tatsuda's grocery store here in town? A. Yes.

Q. Are you acquainted with the defendant, Joseph C. Patterson, seated over at the defense table, Mr. Tatsuda? [244] A. Yes.

Q. And do you also know John Roger Lamb? He is not in the courtroom. Do you know John Lamb? A. Yes.

Q. How long have you known John Lamb?

A. About four years.

Q. And does he shop at your market?

A. Yes.

Q. At your store? A. Yes.

(Testimony of Jimmy K. Tatsuda.)

Q. Mr. Tatsuda, I will ask you if you recall an occasion in the month of July, 1950, that is this year, last July, on which your son William Tatsuda, Joseph C. Patterson and John Lamb were talking together in the back of your store?

A. That is right.

Q. Do you recall that occasion? A. Yes.

Q. Did you hear any of the conversation or did you just observe them talking? A. No.

Q. You didn't hear any of the conversation?

A. No.

Mr. Kay: That is all. Your witness. [245]

Cross-Examination

By Mr. Baskin:

Q. Mr. Tatsuda, you don't know the date that you saw them in there talking?

A. I don't know what day; sometime in July, I believe.

Q. What room was it you saw them in—well, let's see——

Mr. Baskin: No further examination.

The Court: Is that the only time you saw them there, Mr. Tatsuda?

A. I saw them couple times, my boy and John Lamb, and the last time I see Patterson and John and my boy, the three together at the other side of the room.

The Court: You saw them there twice then?

A. Yes; twice or three times. I don't remember very good.

(Testimony of Jimmy K. Tatsuda.)

Redirect Examination

By Mr. Kay:

Q. Joe Patterson was only there once, is that right, Mr. Tatsuda, that you remember that there were the three of them? A. Yes.

Recross-Examination

By Mr. Baskin:

Q. Have you discussed this case with the defendant? [246]

Mr. Kay: The defendant is Joe Patterson.

Q. Have you discussed this case with Joe Patterson? A. I don't know what you mean.

Q. Have you talked with Joe Patterson about this case for which he is on trial? Did you talk with the defendant Joe Patterson about this case for which he is on trial now?

A. I just come in and see. You people ask me what I see. I see it. I see them together one time.

Q. Well, I am asking the question, have you talked with Joe Patterson about this case for which he is now on trial? A. (No response.)

Q. You know the defendant over here, Joe Patterson, don't you? A. Yes.

Q. Have you talked with him about this case? Answer that. A. No.

Q. You haven't talked with him?

A. Well——

Q. When did you talk with him?

A. You mean when? What?

(Testimony of Jimmy K. Tatsuda.)

Q. You know that Joe Patterson is charged here with bribery, don't you, with paying a game agent or Fish and Wildlife agent to let him fish?

A. I don't know whether he paid or not. I never know that.

Q. When did you know you were going to be a witness in this [247] case? When did you know that you were going to be called up here in this courtroom and testify right here?

A. I don't understand what you say.

Q. When—you were told, weren't you before you came in here that you would be a witness in this case? You know, as you testify here, you are a witness; you are a witness for the defendant, don't you?

A. Yes.

Q. And you testified in his behalf; you know that, don't you?

A. I don't know.

Q. You testified as a witness here, didn't you?

A. Yes.

Q. And now, then, when did you know that you were going to be called by the defendant Joe Patterson to testify here today?

A. I don't know when he call; I don't know nothing about it.

Q. Well, I know; but somebody talked with you about it, didn't they?

A. No.

Q. Did you just voluntarily come in here?

A. No.

Q. You didn't?

A. He just call me; that is all.

Q. Who called you?

(Testimony of Jimmy K. Tatsuda.)

A. The gentleman here. [248]

Q. What gentleman?

Mr. Kay: I have never met Mr. Tatsuda. I think I can explain it. Did Billy ask you to come down here? Did Billy tell you that I wanted you to come down here?

A. Billy, yes; he told me.

Mr. Kay: All right.

Q. Who is Billy? A. My boy.

Q. And when did he tell you to come down here?

A. This morning.

Q. This morning? A. Yes.

Q. And that is why you came? A. Yes.

Q. Do you know the defendant over here? Do you see Joe Patterson in the courtroom?

A. Yes.

Q. Which one is he?

A. He is second; the middle chair there.

Q. Now, has he talked with you about this case?

A. No.

Q. Did he talk with you about the fact that he and your son and John Lamb were in your store about July, 1950? A. No, I don't think so.

Q. Did Billy talk with you about it? [249]

A. No.

Q. Did anybody talk with you about it?

A. No.

Q. You are sure of that? A. No.

Q. Well, what did Billy tell you when he told you to come up here as a witness?

(Testimony of Jimmy K. Tatsuda.)

A. Billy told me to tell everything true. I tell you everything true now.

Q. You mean Billy told you to tell everything that was true? A. That is right.

Q. You didn't know what you were going to say? A. No.

Q. And you don't know now either, do you?

Mr. Kay: I ask that that remark be stricken, and the United States Attorney be admonished.

The Court: Well, that last remark will be stricken because of the difficulty the witness has with the English language apparently.

Redirect Examination

By Mr. Kay:

Q. Mr. Tatsuda, had I ever seen you before I opened that door for you just a minute ago?

A. Yes. [250]

Q. When did I ever see you?

A. I never see you before.

Q. You never saw me before in your life?

A. No.

Q. All right.

The Court: Well, Mr. Tatsuda, did anybody tell you, your son or anybody else, what they were going to ask you up here today, what questions they would ask you here today? Did anybody tell you that?

A. No.

The Court: You didn't know what questions

(Testimony of Jimmy K. Tatsuda.)

anybody was going to ask you when you came and sat in this chair; is that correct?

A. My boy tell me this morning, he says, "He might call you in the courthouse. Tell everything true." I tell you everything true now.

The Court: Well, did anybody ask you what you knew about this before they called you?

A. I know something is trouble.

The Court: That is all.

Mr. Baskin: No further examination.

Mr. Kay: That is all. Thank you, Mr. Tatsuda.

A. Can I go home now?

Mr. Kay: Yes, sir.

(Witness excused.) [251]

CHESTER O. KLINGBEIL

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Would you state your name please to the jury? A. Chester O. Klingbeil.

Q. Where do you live, Mr. Klingbeil?

A. I live at Stedman Street.

Q. Is that in the City of Ketchikan, Alaska?

A. Yes, sir.

Q. Are you acquainted with—how long have you lived here in Ketchikan?

A. About thirty years.

(Testimony of Chester O. Klingbeil.)

Q. And I will ask you if you are acquainted—what is your occupation?

A. Longshoreman and fisherman.

Q. Are you acquainted with John Roger Lamb?

A. Yes.

Q. How long have you know John Lamb?

A. Oh, three or four years. I worked longshoring with him.

Q. Calling your attention to a day in early June of this year, 1950, possibly about June 7th, I will ask whether or not you had a conversation at that time with John Lamb? A. I did.

Mr. Bailey: I object to the question, your [252] Honor.

Mr. Kay: That is an introductory question. I am going to ask the whole question.

The Court: Objection overruled.

Q. You may answer that question.

A. Yes. I talked to John Lamb, or John Lamb came and talked to me in Ed and Joe's Pool Room.

Q. All right. Let me ask you this question. In this conversation that you had with John Roger Lamb at Ed and Joe's Pool Room, or did you have a conversation with John Roger Lamb at Ed and Joe's Pool Room sometime in early June, possibly June 7th or thereabouts, of 1950, at Ketchikan, Alaska, in which no other persons being present except yourself within hearing of the conversation, in which John Roger Lamb made the following conversation—did you have such a conversation, first? A. Yes.

(Testimony of Chester O. Klingbeil.)

Q. Now, at that time and place in the course of that conversation did John Roger Lamb inform you or state substantially that he had just gotten word of his appointment as stream watchman in the Boca de Quadre for the 1950 fishing season?

A. Yes; that is right.

Q. And did he in the course of the same conversation at the same time and place state substantially that "There is an early run of sockeyes down there"? [253]

A. Yes.

Q. And did he at the same time and place and in the course of the same conversation say to you, "Why don't you come down and get them, and we can make some real money this season"?

Mr. Baskin: Your Honor, I am going to object to this question and ask that the witness be requested to state the conversation himself rather than counsel asking the witness—

Mr. Kay: I specifically asked the impeaching question.

Mr. Baskin: You didn't lay the predication for it.

Mr. Kay: I asked the impeaching question of John Roger Lamb this morning, the very identical question.

The Court: I thought that he did lay the foundation for it with the witness Lamb but, if you contend he did not, you will probably have to refer to the record. Do you contend that no such foundation was laid?

(Testimony of Chester O. Klingbeil.)

Mr. Kay: You say I didn't ask such a question of Lamb this morning?

The Court: I told him to put it in writing, and he has got it, I suppose, there.

Mr. Kay: I have it and read it to him.

Mr. Baskin: Maybe I am mistaken. I know he asked a question similar to it yesterday, and it was improperly laid [254] at that time; I am positive of that.

The Court: Well, he laid the foundation this morning.

Mr. Baskin: Very well.

Q. Well, now, where were we? During the course of the same conversation at the same time and place, the same persons being present, did John Roger Lamb state substantially to you, "Why don't you come down and get them, and we can make some real money this season"?

A. Yes; that is right.

Q. And at the same time and place, at Ed and Joe's Pool Room, Ketchikan, Alaska, Territory of Alaska, the same conversation, the same persons being present, did he make substantially the following statement: "We can work together, Chester, this summer fishing the creeks"?

A. Yes; that is right.

Q. Now, I will ask you if you had another conversation with John Roger Lamb on or about June 20th at the Thomas Basin Dock, no other persons being present except yourself and John Roger Lamb?

A. That is right.

(Testimony of Chester O. Klingbeil.)

Q. And I will ask you if on that date at that place in the conversation with you John Roger Lamb made substantially the following statement: "Come on down to Boca de Quadre and fish during the closed season"? Did he say substantially [255] that?

A. That is the way he said it, exactly.

Q. Did he say substantially, "There is no chance of getting caught. I have got it fixed"?

A. That is right.

Q. And did he later in the same conversation say, "Well, if I do get caught, I can always turn State's evidence like that guy up at Red Fish Bay"?

A. That is the truth.

Mr. Kay: No further questions.

Cross-Examination

By Mr. Baskin:

Q. Are you a fisherman, Mr. Klingbeil?

A. Yes, sir.

Q. And you have known John Roger Lamb, you say, about three years?

A. About three years, I guess.

Q. You had a conversation with him about June 7th, was it?

A. About June 7th or thereabouts; I don't know the exact date.

Q. Well, was it before June 7th? A. No.

Q. Do you think it was?

A. It was after he was reinstated in the Fish and Wildlife.

Q. You know it was? Were you present when

(Testimony of Chester O. Klingbeil.)

he was reinstated [256] in the Fish and Wildlife?

A. No.

Q. Then you don't know of your own knowledge that it was at that time, do you?

A. He come and told me so.

Q. You mean he told you he had been reinstated?

A. That is right?

Q. And what day was that?

A. I don't remember that.

Q. You don't remember? A. The date.

Q. Well, how is it that you remember so well what he said to you? Now, tell the jury just what you have just testified in answer to this counsel's question? What did he say to you there at Ed and Joe's Pool Room?

A. He said for me to come down there to Quadra and fish, that he had it all ready to go and he wanted me to come down.

Q. Is that all he said?

A. It was quite a long conversation. I don't remember it all. He wanted me to come down there.

Q. And that is all he wanted you to do?

A. And fish.

Q. Fish? Where?

A. And could make good money down in Quadra; that he was going to be the stream watchman at Quadra. [257]

Q. Well, it is not illegal to fish in Quadra, is it?

A. That is right?

Q. So it was proper for you to go to Quadra and fish, wasn't it? A. That is right.

(Testimony of Chester O. Klingbeil.)

Q. And in fact that is what you had in mind doing, wasn't it?

A. Well, this was before the season he wanted me to go down.

Q. I know; but he asked you to go down and fish in Quadra, didn't he? A. That is right.

Q. And you expected to go down in Quadra and fish, didn't you? A. I expected to.

Q. Now, when did you know you were going to be a witness in this case?

A. I didn't know until after this case came up.

Q. I asked you, when did you know you were going to be a witness?

A. I didn't know until a couple days ago that I was going to be a witness.

Q. When was that?

A. I don't exactly remember.

Q. What day was it?

A. I told them I would go up and testify to the facts.

Q. Who did you tell that to? [258]

A. I told Joe Patterson that——

Q. You mean he asked you to come and testify?

A. He did not.

Q. Well, you just said that you told him that you would? A. I told him that I would.

Q. Then he didn't ask you to come up and testify? A. No; he did not ask me.

Q. You voluntarily told him you would come up and testify? A. That is correct.

Q. Now, then, tell the jury whether or not you

(Testimony of Chester O. Klingbeil.)

ever told a Fish and Wildlife agent of this conversation you had with Lamb on or about the 7th of June, 1950?

A. I did not talk to any Fish and Wildlife agent.

Q. Did you ever tell a United States Marshal?

A. No.

Q. Or any other law enforcement officer?

A. No.

Q. You volunteered and told the defendant that you would testify in his behalf, didn't you?

A. That is right.

Q. Now, then, when did you talk with Mr. Kay about these questions that he just asked you?

A. A couple nights ago.

Q. A couple nights ago?

A. And at noon today. [259]

Q. And at noon today? A. That is right.

Q. Did he have them written out for you a couple nights ago? A. No.

Q. Did he have them written out for you today?

Mr. Kay: Your Honor, may I inquire if the United States Attorney is suggesting, as he apparently is, to this jury that I am coaching the witnesses with written questions?

Mr. Baskin: I am not.

Mr. Kay: If he is, I resent it, and I would like to have his remark stricken.

Mr. Baskin: I can ask this witness when he discussed it with this counsel and whether or not he had those questions written out for him to look at. I am entitled to show that.

(Testimony of Chester O. Klingbeil.)

The Court: Yes, except that the question of course is susceptible of being construed as telling him what the conversation was. But nevertheless you can ask him whether or not he saw the questions written out.

Mr. Baskin: Very well.

Q. Those questions that counsel asked you, did you see them written out? A. I did not.

Q. You didn't see counsel or anybody else write them; is that right? [260]

A. No; I didn't see him write them; no.

Q. No. But did you see them, as they were written and as they were asked you, during the noonhour today?

A. I have never seen the piece of paper; I have seen it, but I never read it.

Q. Did counsel read the questions to you during the noonhour?

A. He read them to me; yes, sir.

Q. During the noonhour. And he told you then you would be asked those questions, didn't he?

A. That is right.

Q. What is your full name again?

A. Chester O. Klingbeil.

Q. Chester O. Klingbeil?

A. That is right.

Q. Tell the jury whether or not you were the same Chester O. Klingbeil, that is K-l-i-n-g-b-e-i-l, in the case of the United States of America vs. Chester O. Klingbeil in the United States Commis-

(Testimony of Chester O. Klingbeil.)

sioner's Court at Ketchikan, Alaska, on or about November 19, 1947.

A. In the case of the time I was arrested with hunting without a license?

Q. That is correct.

A. Correct. I hunted with the Fish and Wildlife Service; yes.

Mr. Baskin: May it please the Court, I would like to introduce in evidence the judgment and conviction of Chester [261] O. Klingbeil in the United States Commissioner's Court at Ketchikan, Alaska, November 19, 1947.

The Court: Do you wish to look at it?

Mr. Kay: I would always prefer to look at Mr. Baskin's exhibits.

Mr. Baskin: You are perfectly welcome to read anything I produce, sir.

Mr. Kay: No objection.

The Court: It may be admitted and marked.

Clerk of Court: The instrument has been marked Plaintiff's Exhibit No. 6.

Mr. Baskin: Ladies and gentlemen of the jury, Plaintiff's Exhibit No. 6 is a judgment and conviction of Chester O. Klingbeil for hunting without a license on November 19, 1947, and shows that he paid a fine of thirty-five dollars. No further examination.

(Testimony of Chester O. Klingbeil.)

Redirect Examination

By Mr. Kay:

Q. Chester, at the time I asked you these questions, at the time I first talked to you, isn't it a fact that I told you all I wanted you to do as a witness was tell the truth? A. That is right.

Q. And that is all you have told? [262]

A. That is all I have told.

Mr. Kay: That is all.

(Witness excused.)

ROLAND D. LINDSEY

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Would you state your full name to the Court and jury please, Mr. Lindsey?

A. Roland D. Lindsey.

Q. You sometimes have a nickname of Blackie?

A. That is right.

Q. Where do you live, Mr. Lindsey?

A. In Ketchikan.

Q. How long have you lived here in Ketchikan, Alaska? A. About thirteen years.

Q. And what is your occupation, sir?

A. Fisherman.

Q. How long have you been a fisherman?

A. Twenty years, I guess.

(Testimony of Roland D. Lindsey.)

Q. Are you acquainted with the defendant in this case, Joseph C. Patterson? A. I am.

Q. How long have you known Joe [263] Patterson? A. About five or six years, I would say.

Q. And are you acquainted also with a gentleman here in town by the name of John Roger Lamb?

A. I am.

Q. How long have you known John Roger Lamb?

A. Approximately two years.

Q. Now, on or about October 25, 1949, do you recall having any conversation with John Roger Lamb in Floyd Dale's machine shop here in the City of Ketchikan with regard to fishing out at Boca de Quadra?

Mr. Baskin: Your Honor, I object to that as being too remote. There should be a limitation somewhere as to when things become material to this issue, and I think that isn't.

The Court: October, 1949?

Mr. Baskin: Yes.

Mr. Kay: About the same time as the first conversation——

The Court: I don't think that is too remote. Objection overruled.

Q. You may answer that question, if you can recall that. A. We did.

Q. Now, was anyone else present during that conversation that would have heard it, if you know or recall?

A. There were two men present. but they couldn't hear it. [264]

(Testimony of Roland D. Lindsey.)

Q. Now, will you state to the Court and jury please, just what John Roger Lamb said to you and what you said to him during the course of that conversation to the best of your recollection?

A. I was in there fixing a part on my boat, and he came in, and we started conversation, and during that conversation he told me that he thought that probably this next year that he would have a better job, possibly as patrolman on one of the boats and that, if there were any chances at all, that he would like to have me go along with him and get fish here and there. He didn't specify any particular place if he was a patrolman. He said that, if he got the same job back as he had the year prior, that he would have a deal down there and he would like to talk to me about it later on.

Q. And was it understood in the course of that conversation that he meant the stealing of fish illegally down at the Boca de Quadra area?

Mr. Baskin: Your Honor, I object to him asking him what Lamb meant.

Q. Well, was it said, or was such a thing stated or inferred during the course of that conversation?

Mr. Baskin: He can't state what Lamb had in mind. I object to the question.

The Court: Well, the question calls for an opinion, [265] and objection to the question is sustained.

Mr. Kay: I had already withdrawn the question, or tried to, your Honor.

The Court: Very well.

(Testimony of Roland D. Lindsey.)

Q. Was it stated by Lamb or inferred by Lamb during the course of the conversation that the deal was to steal fish illegally from the closed waters of the Boca de Quadra? A. Part of it was; yes.

Q. And part of it was to steal them otherwise if he was on a boat; is that right?

A. That is right.

Q. Now, I will ask you if you are also the skipper of the fishing vessel Diamond T?

A. I am.

Q. And did you fish the Diamond T this season, 1950? A. I did.

Q. Now, I will ask you if on or about August 20, aboard the fishing vessel Diamond T, in the vicinity of Cygnet Island in the Boca de Quadra area—

A. I was.

Q. And I will ask you if on that day and at that time and place John Roger Lamb came aboard the Diamond T? A. He did.

Q. Now, I will ask you if on August 20th aboard your fishing vessel, the Diamond T, near Cygnet Island in the Boca de [266] Quadra area in the presence of your cook George Russell you had a conversation with John Roger Lamb in which substantially the following statements were made—did you have such a conversation, first?

A. We had a conversation.

Q. Now, at that time and place and in the presence of the cook George did John Lamb urge you to enter the creek, Humpback Creek, and there engage in fishing in a closed area? A. He did.

(Testimony of Roland D. Lindsey.)

Q. And did he also at the same time and place and in the presence of the same person state to you that there were a lot of fish in there, three or four thousand? A. He did.

Q. And did he at the same time and place and in the presence of the same person state to you substantially that there was a lot of money to be made in there this year? A. Yes.

Q. And did he state at the same time and place and in the course of the same conversation that he was only working with one or two boats this season and not with everybody like he did last year?

A. He did.

Q. And did he at the same time and place and in the presence of the same person state to you that "There is no chance to [267] get caught. I have got it all fixed"? Did he make that statement?

A. He did.

Q. And did he at the same time and place and in the course of the same conversation outline a system of signal lights which he had agreed upon with other Fish and Wildlife agents which would be flashed to warn you of the approach of any other Fish and Wildlife boat? A. He did.

Q. And did he at the same time and place and in the course of the same conversation offer to accept one hundred dollars per thousand fish for such fishing in illegal, closed waters? A. He did.

Mr. Kay: Your witness.

(Testimony of Roland D. Lindsey.)

Cross-Examination

By Mr. Baskin:

Q. Your name is Rollie Lindsey? A. It is.

Q. When did you know you were going to be a witness in this case? A. Sunday afternoon.

Q. Who asked you to be a witness?

A. Mr. Patterson. [268]

Q. Did he ask you, or did you tell him that you would be a witness? A. He asked me.

Q. He did? And you told him you would?

A. I told him I would.

Q. And that was last Sunday?

A. That is right.

Q. Did you talk with him about this case?

A. Certain parts of it; yes.

Q. About what you have just stated?

A. No, I don't believe I did.

Q. But you did talk with him about this case; is that right? A. We did.

Q. But you didn't say anything to him about the statement that you have just related; is that right? A. I did.

Q. You didn't even mention it to him; is that correct? A. I mentioned it; yes.

Q. What did you tell him—strike that a minute. Did you tell him about Lamb approaching you out there on the 20th of August? A. I did.

Q. Did he ask you that, or did you voluntarily tell him that?

A. I voluntarily told him that.

(Testimony of Roland D. Lindsey.)

Q. So you just voluntarily told him that Lamb asked you, told [269] you to fish in Boca de Quadra, the closed waters; is that right?

A. Would you repeat that? I didn't get that.

Q. You told Patterson that Lamb told you you could fish in the closed waters of the Boca de Quadra; is that right?

A. That is right.

Q. And you told him then you would be a witness in this case?

A. I did.

Q. Did he tell you at that time what he wanted you to testify to?

A. No.

Q. He just asked you to be a witness?

A. He asked me to be a witness.

Q. Did you know what you were going to testify to?

A. Yes.

Q. What were you going to testify to?

A. I was going to testify that John Lamb had approached me.

Q. And that was all?

A. Tell my story, just what happened in Quadra.

Q. Did you ever talk with counsel, Mr. Kay, here?

A. I did.

Q. When did you talk with him first?

A. Sunday afternoon.

Q. Sunday afternoon. Did he tell you what you were to—did he go over these questions with you Sunday afternoon that [270] he just asked you?

A. He asked me my story of what happened down there, and I told him.

Q. But he didn't ask you the questions?

(Testimony of Roland D. Lindsey.)

Mr. Kay: If the Court please, I would like to ask the Court to admonish counsel to please let the witness finish his answers. He is cutting off the end of his answers all the time.

The Court: Well, of course the witness should be allowed to finish his answers whether or not he had finished it and started something else. It is often difficult to object.

Mr. Baskin: All right.

Q. You heard counsel read these questions to you that you answered a while ago, didn't you?

A. I did.

Q. Now, then, did you ever see those questions before you came into this courtroom?

A. No, sir.

Q. Did you ever see any statement of them?

A. I never saw the statement.

Q. Did you talk to counsel during the noonhour?

A. I did.

Q. And is that the first time that he told you that you would be asked those specific questions that he asked you? [271]

A. Yes.

Q. Did he go over those questions with you during the noonhour and tell you that you would be asked those questions?

A. No.

Q. You mean to tell the jury here that he went over those questions with you and didn't tell you that you would be asked those questions?

A. He told me that there would be questions asked and that I wouldn't have to tell any story due to the change in the case?

(Testimony of Roland D. Lindsey.)

Q. Due to the change in the case?

A. That is right.

Q. In other words, he went over these questions with you and told you what he was going to ask you; is that right? A. No.

Q. Well, he read the questions to you, didn't he, in substance?

A. He just told me he was going to ask me questions, and I wouldn't have to tell a story.

Q. Did he tell you of those specific questions that he asked you just a moment ago?

A. Will you repeat that please?

Q. Did counsel, Mr. Kay, tell you that he was going to ask those questions that he just asked you on the direct examination? [272]

A. He just told me that he was going to ask questions and I would have to answer them.

Q. And did he tell you the substance of those questions? A. No, he didn't.

Q. Didn't he tell you that you would be asked whether Lamb urged you to fish in that closed area?

A. I understood that before.

Q. Oh, you understood that. Did he show you those questions that he was going to ask you?

A. No.

Q. But you knew they were written out, didn't you? A. I knew he had a book.

Q. Of questions that he was going to ask you?

A. Yes.

Q. And he told you that during the noonhour?

A. Yes.

(Testimony of Roland D. Lindsey.)

Q. Is that right? A. Yes.

Q. Now, you stated here that about October 25th, didn't you say about October 25, 1949, you had a conversation with Lamb? A. That is right.

Q. How do you know it was October 25th?

A. On or about October 25th.

Q. You don't know what day it was? [273]

A. I am not positive; no.

Q. You just know it was in October then; is that right? A. That is right.

Q. You don't know whether it was on the 25th or not, do you? A. No.

Q. Then you didn't tell exactly the truth when you said it was on the 25th?

Mr. Kay: Oh, I object to that. That is an unfair insinuation.

Q. Is that right?

Mr. Baskin: I will withdraw the question.

Q. Now, you had a conversation with Lamb on or about, you said, the 25th of October, 1949.

A. Yes.

Q. And it was something, as I remember your testimony, to the effect that he hoped to do a little better during 1950? A. That is right.

Q. Now, then, did you ever report that to the Fish and Wildlife Service? A. No, sir.

Q. Any agent of the Fish and Wildlife Service?

A. No.

Q. Or any other United States Marshal or Federal officer? A. No, sir.

(Testimony of Roland D. Lindsey.)

Q. Territorial officer? [274] A. No, sir.

Q. Now, with regard to the conversation you had with him on August 20, 1950, did you ever report that to a Fish and Wildlife agent or a law enforcement officer? A. No, sir.

Q. You never mentioned it to anyone then except the defendant here, is that correct, and Mr. Kay?

A. That I would say no to.

Q. But you never told an officer of the law or the Fish and Wildlife Service of it?

A. No, I didn't.

Q. Your name is Rollie Lindsey?

A. That is right.

Q. Mr. Lindsey, tell the jury whether or not you were the same Rollie Lindsey in the case of the United States of America vs. Rollie Lindsey in United States Commissioner's Court at Ketchikan, Alaska, on or about July 29, 1940? A. I was.

Mr. Baskin: May it please the Court, I would like to offer in evidence the judgment of conviction. Perhaps counsel would like to see it.

Mr. Kay: Counsel would always like to see it.

Mr. Baskin: You are welcome to, sir.

Mr. Kay: No objection.

The Court: It may be admitted and marked as Plaintiff's [275] Exhibit.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 7.

Mr. Baskin: Ladies and gentlemen of the jury, Plaintiff's Exhibit No. 7 is a judgment and con-

(Testimony of Roland D. Lindsey.)

viction of Rollie Lindsey in violation of the Act of Congress June 6, 1924, as amended, and regulations thereunder, for the crime of illegal fishing, and on that day was fined forty dollars.

Q. Now, Mr. Lindsey, tell the jury whether or not you are the same Rollie Lindsey who was the defendant in the case of the United States of America vs. Rollie Lindsey in the United States Commissioner's Court at Ketchikan, Alaska, on or about October 15, 1948? A. That is right.

Mr. Baskin: May it please the Court, I have a judgment of conviction I would like to introduce in evidence, and perhaps counsel would like to see it (passing a document to Mr. Kay).

Mr. Kay: No objection.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 8.

Mr. Baskin: Ladies and gentlemen of the jury, Plaintiff's Exhibit No. 8 is a judgment and conviction of Rollie Lindsey for violating Section 227.9 of the Laws and Regulations for the Protection of Commercial Fisheries in [276] Alaska, Act of June 18, 1926, as amended, for the crime of fishing during a closed season, and the judgment shows that he was fined five hundred dollars and that it was paid. No further examination.

Redirect Examination

By Mr. Kay:

Q. Just a few questions on redirect, Mr. Lindsey.

(Testimony of Roland D. Lindsey.)

In answering some of the questions of Mr. Baskin on his cross-examination you used the expression, "Mr. Kay told me I wouldn't have to tell a story." Now, it is true that when I first discussed this case with you I said that I would ask you questions and you would merely be expected to testify as to the gist of the conversation that took place; is that correct?

Mr. Bailey: It is leading, your Honor. We object to it.

The Court: But it is leading on an introductory or preliminary matter. Objection is overruled.

Q. Is that correct, sir? A. That is.

Q. And that later this noon I advised you that due to the fact that I had to ask an impeaching question I would read certain statements to you and ask you if those statements were made; is that correct? [277] A. That is correct.

Q. And that is what you meant by the expression? A. That is, exactly.

Q. And at no time have I advised you anything other than I expected you to take the stand and merely tell the truth, is that correct, sir?

A. It is.

Mr. Kay: That is all.

Recross-Examination

By Mr. Baskin:

Q. Another question. Then he did read to you those questions which he told you that he would ask; is that right? Then counsel during the noonhour

(Testimony of Roland D. Lindsey.)

did read to you those questions which he asked you here a while ago?

Mr. Kay: I believe that is exactly what he testified.

Mr. Baskin: Well, I am asking the witness to testify.

Q. Answer the question. A. He did.

Mr. Baskin: That is all.

Mr. Kay: That is all.

The Court: Well, now, as a result of these convictions have you got it in for the prosecution?

A. No, sir. [278]

The Court: You don't feel unfriendly to them?

A. I do not.

The Court: That is all.

(Witness excused.)

GEORGE RUSSELL

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Would you state your name please?

A. George Russell.

Q. George Russell. And where do you live, George?

A. I live at Mountain Point.

Q. That is near Ketchikan, Alaska.

A. Yes, sir.

(Testimony of George Russell.)

Q. How long have you lived here in the vicinity of Ketchikan? A. Three years.

Q. Are you acquainted with Rollie Lindsey, the gentleman who just left the stand?

A. Yes, sir.

Q. During this summer were you employed in any capacity by Rollie Lindsey?

A. Yes, sir; I was the cook on the Diamond T.

Q. And are you acquainted with a fellow here in Ketchikan by the name of John Roger [279] Lamb? A. Yes, sir.

Q. And you know that he was stationed out in Boca de Quadra as a Fish and Wildlife agent this summer? A. Yes, sir.

Q. Now, calling your attention to about the date of Sunday, August 20th, of this last year, 1950, did you have a conversation, or were you present when a conversation was had between Rollie Lindsey and John Lamb aboard the Diamond T, the Diamond T then being off Cygnet Island in the Boca de Quadra area? A. Yes, sir.

Q. You were present during that conversation?

A. Yes, sir.

Q. And did you hear that conversation or substantially all of it? A. I think so.

Q. Now, I will ask you if at that time and place, aboard the Diamond T, in the presence of yourself and Rollie Lindsey, if John Roger Lamb made substantially the following statements? Did he at that time and place urge Lindsey to enter the

(Testimony of George Russell.)

closed area of the Boca de Quadra and there engage in fishing in the creeks in that area?

A. Yes, sir.

Q. And did he say that "There are a lot of fish in there, in Humpback Creek, or in that area, three or four thousand"? [280]

A. That is the exact words.

Q. And did he say that "There is a lot of money to be made in there this season, Rollie," or words to that effect? A. Yes, sir.

Q. And did he say that "I am working with only one or two boats this season, not everybody that comes in like last year"? A. That is right.

Q. And did he further say at the same conversation, same time and place, same persons being present, that "There is no chance to get caught. I have got it fixed"? Did he make substantially that statement? A. Yes, sir.

Q. And did he explain to Rollie Lindsey at that time and place and in your presence a system of signal lights or signal flashlights which would be done by two other agents of the Fish and Wildlife Service to protect you against the approach of another Fish and Wildlife boat?

A. That is right.

Q. And did he at that time and place and in your presence offer to accept one hundred dollars per thousand fish from Blackie Lindsey for any of these illegally caught fish in the Boca de Quadra?

A. That is the exact words.

Mr. Kay: No further questions. [281]

(Testimony of George Russell.)

Cross-Examination

By Mr. Baskin:

Q. What were the exact words that he stated out there? A. He urged——

Q. No. Just this last statement here; what were the exact words that he said, language stated?

A. He told—he was saying that——

Q. Well, tell me what the exact words were.

Mr. Kay: Well, wait a minute. Don't interrupt him all the time. Let him get started.

Q. What were his exact words now?

A. He said that he would take one hundred dollars for a thousand fish.

Q. What else did he say there?

A. Well, that was all there was to it.

Q. Then that is all he said then?

A. Well, that is all we was talking about.

Q. When did you know you were going to be a witness in this case?

A. Didn't know until this morning.

Q. Who asked you to be a witness?

A. I don't know as anybody did.

Q. Well, did you volunteer to be a witness?

A. That is right.

Q. Who did you volunteer to be a witness [282] for? A. Who did I volunteer for?

Q. Who did you tell you would be a witness in this case?

A. I don't know as I told anybody.

Q. Well, you said you knew you were going to be a witness today, didn't you, this morning, and

(Testimony of George Russell.)

nobody asked you to be a witness? Now, who did you tell that you would be a witness? Anybody?

A. Well, I was asked to be a witness; yes.

Q. Well, who asked you?

A. Rollie Lindsey.

Q. Rollie Lindsey? Is that the fellow you work for?

A. That is right.

Q. That was this summer?

A. That is right.

Q. And he was the one that asked you?

A. That is right.

Q. Did anybody else?

A. As far as I know, no.

Q. Well, if they did, you would know, wouldn't you? Either somebody else asked you, or they didn't, and you know that, don't you?

A. That is right.

Q. Well, did anybody else ask you to be a witness?

A. That is all.

Q. Just Rollie Lindsey? [283]

A. That is right.

Q. That was this morning? Did you talk with anybody else about it before coming in here on the witness stand?

A. Nobody.

Q. Did you talk with Mr. Kay about it?

A. No.

Q. You haven't talked with anybody?

A. No.

Q. Did Lindsey tell you what you were going to testify to?

A. No.

Q. Did he tell you that you might be asked ques-

(Testimony of George Russell.)

tions about a conversation with Lamb aboard his boat? A. He told me to tell the truth.

Q. Well, I didn't ask you that question. I asked you, did he tell you that you would be asked questions as to the conversation with John Lamb aboard that boat?

A. Well, that is what the trial is for.

Q. But what did Lindsey tell you this morning?

A. He didn't tell me nothing.

Q. He just asked you to come up and be a witness?

A. That is right. He said, "All you got to do is tell the truth."

Q. Is that all he said? A. That is all.

Q. Anything else? [284] A. That is all.

The Court: Well, did you know what questions you would be asked when you got here?

A. No, sir.

The Court: They came as an entire surprise to you, did they? A. Yes, sir.

Q. Now, you overheard that conversation then about August 20, 1950?

A. Yes; I heard the conversation.

Q. Did you tell any agent of the Fish and Wildlife Service about that conversation?

A. Did I tell anybody?

Q. Yes. A. No, sir.

Q. You didn't tell the United States Marshal?

A. No, sir.

Q. Or any law enforcement officer?

A. (Indicating in the negative.)

(Testimony of George Russell.)

Q. You know the defendant Patterson here, don't you? A. I have seen him.

Q. Here in Ketchikan? A. Yes, sir.

Q. And are you a friend of his?

A. Well, not exactly a friend. I know him when I see him. [285]

Q. Do you want to help him out in this case?

A. Well, I suppose I do.

Mr. Baskin: No further examination.

Redirect Examination

By Mr. Kay:

Q. All that Blackie asked you was just to tell the truth; is that it? A. That is right.

Mr. Kay: No further questions. You may leave the stand.

Mr. Baskin: Well, just a moment.

Recross-Examination

By Mr. Baskin:

Q. You say that Blackie told you to tell the truth? A. That is right.

Q. What did he tell you to tell the truth about?

A. Just about the time that we was there.

Q. You mean, that you were where?

A. Where we was fishing in Boca de Quadra.

Q. You mean, to tell the truth about the conversation with Lamb on or about August 20th?

A. Yes.

Q. Then he did tell you what you were going to testify about [286] then, didn't he?

(Testimony of George Russell.)

A. No, he didn't.

Q. Well, you just said that he told you you would testify about that conversation.

A. He told me to come and tell the truth about the time when the agents come aboard our boat.

Q. When what agents came aboard your boat?

A. Johnny Lamb.

Q. When was that?

A. Well, they come aboard so many times I couldn't keep track.

Q. Well, when did Lindsey say that he came aboard that you would testify about?

A. I don't know when Lindsey said anything about it.

The Court: Well, then, you mean you didn't know what occasion about boarding the boat you were going to testify about until you got here and the questions were asked you?

A. No, I didn't know.

Q. Have you ever been convicted of a crime?

A. Yes, sir, I have.

Mr. Baskin: No further examination.

Redirect Examination

By Mr. Kay:

Q. How long ago was that?

A. About fifteen years ago. [287]

Mr. Kay: That is all.

(Witness excused.)

(Whereupon Court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

The Court: Call your next witness.

WALTER C. MALTSBERGER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Would you state your full name to the jury, Carl?
A. Walter C. Maltsberger.

Q. And where do you live, Mr. Maltsberger?

A. Ketchikan, Alaska.

Q. How long have you lived here in Ketchikan?

A. Three years.

Q. Are you acquainted with the defendant in this case, Joseph C. Patterson?
A. Yes.

Q. How long have you known Joseph Patterson?
A. Four or five years.

Q. Are you acquainted with one of the witnesses in this case, a man by the name of John Roger Lamb, John R. Lamb? [288]
A. Yes.

Q. How long have you known John Lamb?

A. Almost four or five years.

Q. Well, now, did you sign on as a member of the crew of the *Rolling Wave*, owned by Joseph C. Patterson, during the fishing season this year, Mr. Maltsberger?
A. Yes, I did.

(Testimony of Walter C. Maltsberger.)

Q. About when did the Rolling Wave leave Ketchikan for the fishing season to the best of your recollection? A. August 14th.

Q. August 14th? A. Yes.

Q. Where did you proceed at that time, Carl?

A. We left town and we went to Boca de Quadra.

Q. And as you entered into the area of Boca de Quadra near Cygnet Island, did anything happen?

A. Yes.

Q. What did happen? Will you tell the jury what did happen at that time?

A. We was about a mile and a half off of the marker, and a speedboat come out, and so it come up and landed right besides of us.

Q. Now, who, if anyone, was on that speedboat?

A. John Lamb.

Q. Anyone else; or was he alone? [289]

A. He was alone.

Q. And what happened then; will you tell the jury?

A. Well, he came alongside of us, and I tied the boat on the side, and he wanted to know if we was going to fish around there, and he said, "There is a lot of money to be made around here," and he wanted us to try it out.

Q. Was that conversation with yourself or with Joseph C. Patterson? A. That was Joe.

Q. And you were on deck at that time and heard part of the conversation? A. Yes.

Q. Now, will you tell the Court and jury just to

(Testimony of Walter C. Maltsberger.)

the best of your recollection what parts of the conversation you heard, if any?

A. Well, he just come on there, and he asked us, he said he wanted to know if we was going to fish around there, that there was a lot of fish showing up. He said it would be a good chance to make a little money there.

Q. Did he have any reference during the conversation to any particular portion of the Boca de Quadra? A. Will you state that again?

Q. Did he have reference to any particular place in the Boca de Quadra? A. Yes. [290]

Q. What place, if any?

Mr. Baskin: Your Honor, I object to that. He should ask the witness what he said without asking him a leading question as to what he was referring to. He can state what Lamb stated, and that should be the question in that form.

The Court: Well, I think it is a matter that a leading question can be asked about. Objection overruled.

Mr. Baskin: Well, it also infers what was in the mind of Lamb, which this witness cannot testify to, and I object to it on that ground.

Mr. Kay: Well, your Honor, please, not as he stated it.

The Court: Objection overruled.

Q. What, if anything, did he say in that regard, Carl, that you recall?

A. The part I recall is that he said there was a lot of fish up there.

(Testimony of Walter C. Maltsberger.)

Q. Up where? A. In Mink Arm.

Q. And did he refer to, if you know, did he refer to a closed area at that time?

A. He said that everything was set. He said everything was O.K. And we run on in and we dropped anchor in an open area.

Q. And what did John Lamb do then, if [291] anything?

A. Well, he left the boat for a few hours, and then he come back.

Q. Now, who was aboard the vessel when he came back, if you recall?

A. Joe Patterson and I.

Q. Where were the rest of the crew?

A. They were out riding around.

Q. In the speedboat? A. Yes.

Q. Skiff? A. Skiff.

Q. Do you recall, where were you at that time, Carl? A. I was down in the galley.

Q. And where was Joe Patterson?

A. He was doing dishes.

Q. And where was John Lamb?

A. He was down in the galley, too, then.

Q. What, if anything, was said between Joe Patterson and John Lamb on that occasion?

A. Well, he come back over after everybody left, and he comes on there, and he sits and talks, and he said, "There is a lot of money there to be got if you just go and get it." Joe said, "Well, I don't like the idea of it," and so he says that everything was

(Testimony of Walter C. Maltzberger.)

fair. He says he got everything fixed so can't be picked up for it or anything. [292]

Q. And did he say anything else that you can recall, that you can recollect?

A. Quite a little bit. He says, telling how much money he made last year there, and he says he paid up all his bills and bought a troller, and he still says he could do better this year if he gets the right guys there and take care of it.

Q. And at that time did Joe Patterson and Lamb agree to anything? A. No, they didn't.

Q. And where did you go then from that area?

A. We pulled anchor the next morning and we left, and he said—the Chris-Craft come aboard of us—he said the Chris-Craft was fixed. I don't know their names. It was two young fellows, and they come aboard and searched all over. I don't know what they was looking for. So we went on to Lucky Cove and fished there all day.

Q. Did you run back into the Boca de Quadra area on the 16th to the best of your recollection?

A. Somewhere in there; yes.

Q. The following day? A. Yes.

Q. And do you recall an occasion when Lamb and one of the fellows on the Chris-Craft pulled alongside of the Rolling Wave? [293]

A. Yes, they pulled alongside, and John said, "Everything is fixed." He introduced us to him, to the tall slim fellow, and said, "We got everything fixed." He said, "You can go in there any time you want now."

(Testimony of Walter C. Maltsberger.)

Q. Did he say anything about the signal lights, do you recall?

A. Yes. He said, "There are three lights there. It would take about an hour, I imagine, from the first one on to the last one."

Q. And do you recall any other conversation, or is that the best of your recollection?

A. That is the best of my recollection right now.
Mr. Kay: Your witness.

Cross-Examination

By Mr. Baskin:

Q. Mr. Maltsberger, when did you know that you were going to be a witness in this case?

A. Oh, quite a few days ago.

Q. Who asked you to be a witness?

A. He said I would be called up any time.

Q. Who asked you to be a witness?

A. Patterson.

Q. That is the defendant over here?

A. Yes. [294]

Q. Did you fish on that boat, the *Rolling Wave*, during the season of 1950? A. Yes.

Q. And where did you fish?

A. Fished around Boca de Quadra and Lucky Cove.

Q. Did you fish in Boca de Quadra area?

A. Yes.

Q. Did you fish in Mink Arm? A. Yes.

Q. What part of Mink Arm?

(Testimony of Walter C. Maltzberger.)

Mr. Kay: I object to that question, your Honor, unless the witness is advised that he doesn't have to incriminate himself unless he wants to. I think that the Court should admonish or instruct him that he has the privilege of refusing to answer on the grounds that to do so might incriminate him.

The Court: Well, you needn't answer any question that might incriminate you.

A. We fished in the Boca de Quadra. That is a lot of area there.

Q. Did you fish up near Humpback Creek within the markers, that is closed to commercial fishing for salmon?

A. Do I have to answer that?

The Court: It all depends on whether you think it might incriminate you. [295]

Q. Would you like to answer that question?

A. No, I wouldn't.

Q. Then you feel you would be incriminated if you would answer it?

A. Myself, yes.

The Court: Well, you can't speak for anybody else. You have to speak for yourself.

Q. Then you are not going to answer that question? All right. You testified here that you had a conversation with Lamb, or he had a conversation with Lamb—I mean, Lamb had a conversation with Patterson on or about the 15th?

A. No.

Q. What day was it?

A. As far as I can figure, it was the 14th.

Q. Do you know it was the 14th?

A. The day we left Ketchikan.

(Testimony of Walter C. Maltsberger.)

Q. And you know it was on the 14th then?

A. Yes.

Q. So you know the day you left Ketchikan?

A. Yes.

Q. And Lamb went aboard and talked with you; is that right?

A. He didn't come aboard to talk to me. He come to talk to Patterson.

Q. Well, I thought you said you were aboard and heard the conversation? [296]

A. I was. I tied his skiff up there.

Q. But he wasn't talking to you. He was talking to Patterson. Now, what did he say to Patterson while you were—strike that a minute. You said, I believe, that he said, "There is a lot of fish up there in Mink Arm," did he? A. Yes.

Q. Now, have you talked with counsel about your testimony here today? A. With who?

Q. With counsel, Mr. Kay? A. Yes.

Q. Talked with him today about it?

A. Yes.

Mr. Bailey: Just a minute, your Honor.

Q. You were a crew member during the entire fishing season of the Rolling Wave, weren't you, that is, during all the month of August, 1950?

A. From the 14th on; yes.

Q. From the 14th of August on. When did you cease to be a member of the crew?

A. When the season closed.

Q. When did it close?

(Testimony of Walter C. Maltzberger.)

A. It closed at the end of the season. I don't know.

Q. Did you fish on or about the 16th of August, 1950? A. Somewhere in there; yes. [297]

Q. Did you fish in Mink Arm on or about the 16th of August, 1950?

A. I can't answer that one.

Q. Well, do you know whether you fished or not? Don't you? A. I fished in Quadra; sure.

Q. Well, did you fish within the closed waters near Humpback Creek on or about the 16th of August, 1950? A. I can't answer that.

Q. Well, why can't you answer it?

A. Incriminate myself there.

Q. You don't want to answer it then because you will incriminate yourself; is that the reason you don't want to answer that question?

A. Yes.

Q. Tell the jury whether or not you fished within the closed waters of Mink Arm or Mink Bay on or about the 17th of August, 1950.

A. We fished around Quadra all through the week.

Q. I said in the closed area.

A. I can't answer that.

Q. Why can't you answer? You mean that you claim it will incriminate you to answer that question? A. Yes.

Q. And you don't want to answer it?

A. Yes. [298]

(Testimony of Walter C. Maltsberger.)

Q. Tell the jury whether or not you fished as a member of the crew of the Rolling Wave within the closed waters or the area closed to commercial fishing in Mink Arm near Humpback Creek on or about the 19th of August, 1950.

A. Still incriminate myself.

Q. You mean you would incriminate yourself to answer that question? A. Yes.

Q. And, therefore, you decline to answer it, as well as the previous questions I asked you, for that reason? A. Yes.

Q. All right. Were you aboard the Rolling Wave on August 16, 1950?

A. I was on it all the time.

Q. Also on the 17th? A. Yes.

Q. And also on the 19th? A. Yes.

Q. You were a crew member aboard that vessel?

A. Yes.

Q. Now, did you participate in all of the fishing that vessel engaged in on the 16th, 17th and 19th of August, 1950?

A. Yes. If the dates are right, yes.

Q. Then during all of the fishing season of 1950 you were on board the Rolling Wave and you participated in all of the [299] fishing that that vessel and its crew engaged in? A. Yes.

Q. Now; Mr. Maltsberger, you don't want to deny that you fished in the area which is closed to commercial fishing near Humpback Creek of Mink Arm or Mink Bay, do you? A. No.

(Testimony of Walter C. Maltzberger.)

Mr. Kay: You don't have to answer that question if you feel it would incriminate you.

Mr. Bailey: Your Honor, can't we have the objections made to the Court rather than to the witnesses. It seems to me that counsel has been admonished three or four times, and it should be enough for a man of his ability.

The Court: I don't think that the witness needs to fear incriminating himself anyhow. I don't think it can be used against him when he is put here under oath and compelled to testify.

Mr. Kay: It is pointless. He is not on trial anyhow, your Honor. I think it is immaterial, irrelevant and incompetent, and I object to it.

The Court: Well, if it goes beyond the dates involved here, it would be.

Q. Then you don't want to deny—I mean, do you want to deny that you fished—I will reframe the question. Then you don't want to deny that you fished in Mink Arm in the area closed to commercial fishing near Humpback Creek on or about [300] August 16th, 17th and 19th?

A. Still incriminate myself.

Q. The Court hasn't ruled that that is incriminating. Answer the question.

Mr. Kay: Oh, it is for the witness to decide, your Honor.

The Court: Well, it is not entirely for the witness to decide. Will you repeat the question? It has got to have some tendency to incriminate before he can claim the privilege.

(Testimony of Walter C. Maltzberger.)

Court Reporter: "Q. Then you don't want to deny—I mean, do you want to deny that you fished—I will reframe the question. Then you don't want to deny that you fished in Mink Arm in the area closed to commercial fishing near Humpback Creek on or about August 16th, 17th and 19th?"

The Court: Well, I think he has the privilege there.

A. I would just as soon not answer that.

Mr. Baskin: Very well, your Honor.

Q. You don't answer it because you claim the privilege; is that correct? A. Yes.

Q. Tell the jury whether or not you were ever convicted of a crime?

A. Well, I don't know as I have ever been convicted of any crime. I might have been picked up once for being drunk or something like that. [301]

The Court: Were you ever sentenced to pay a fine or go to jail?

A. I have been in jail twice.

Mr. Kay: Were you sentenced or just picked up? A. Just picked up.

The Court: I asked you if you had ever been sentenced to jail or sentenced to pay a fine.

A. I have paid a fine; yes.

Q. You were sentenced to pay a fine?

A. Yes.

Q. Then you were convicted then, weren't you?

A. No. I paid bail money. I didn't have to pay it.

Mr. Baskin: No further examination.

(Testimony of Walter C. Maltsberger.)

Redirect-Examination

By Mr. Kay:

Q. Was that on a charge of disorderly conduct the night before you went into the United States Army? A. Yes.

Q. Or Navy; whatever it was?

A. Army.

Mr. Kay: No further questions.

(Witness excused.) [302]

JOHN F. VAN GILDER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kay:

Q. Your name, I believe, is John Van Gilder?

A. John F. Van Gilder.

Q. You are a resident of Ketchikan, Alaska, sir?

A. Yes.

Q. How long have you been a resident of Ketchikan, Alaska?

A. Just over twenty years.

Q. Are you acquainted with the defendant in this case, Joseph C. Patterson?

A. Yes; well acquainted.

Q. How long have you known Joseph C. Patterson? A. Since the spring of 1947.

Q. And have you ever had occasion during the course of your life here in Ketchikan to talk to other people about Joseph C. Patterson?

(Testimony of John F. Van Gilder.)

A. That has happened on several occasions, and——

Q. You don't have to explain at this time, sir. I just want to know if you have talked to other persons about Joseph C. Patterson. A. Yes.

Q. Do you know the general reputation of Joseph C. Patterson in the community in which he lives, Ketchikan, Alaska, for [303] his honesty and integrity? A. Yes.

Mr. Baskin: Your Honor, I don't think that is the proper question. It is not framed according to the law the way it should be framed, as to whether or not he knows it or not.

Mr. Kay: Well, I said, if he knew the general reputation of Joseph C. Patterson in the community in which he lives for honesty and integrity.

The Court: I think that is in the proper form.

Mr. Kay: That is exactly right according to the book. A. Yes.

Q. Will you state to the jury please what that reputation is?

A. Do you want me to state my impression of that, or——

Q. I want you to say what you know of his general reputation for honesty and integrity in this community.

A. Persons I have discussed Joe with have agreed that his——

Mr. Baskin: Your Honor, I object to that. He can give a simple answer.

The Court: Objection sustained.

(Testimony of John F. Van Gilder.)

Q. You should give what they have said regarding their knowledge of him, his general reputation.

A. The very finest.

Q. The very finest. [304]

Mr. Kay: No further questions.

Cross-Examination

By Mr. Baskin:

Q. Mr. Van Gilder, when did you know you were going to be a witness in this case?

A. I was called at one-twenty today.

Q. Today? A. Yes.

Q. Who called you? A. Mr. Patterson.

Q. And asked you to be a character witness?

A. Yes, sir.

Q. And that is the first time you knew about it?

A. Yes, sir.

Q. Now, then, you said you talked with persons about his character, his reputation for honesty and integrity. Who have you talked with?

A. I think the first one I discussed him with was Doctor Cramer.

Q. Is he related to you?

A. Yes, sir; my nephew.

Q. When did you talk with him about it?

A. In the fall of 1947 when Joe was organizing the Boys' Club.

Q. That is the first time? [305]

A. That is the first time I recall.

Q. Have you talked with him any other time about him?

A. I think about two months ago. Yes; about

(Testimony of John F. Van Gilder.)

two months ago we had another discussion of Joe because he had been a patient.

Q. And that is when you talked with him?

A. That is the second time that I recall.

Q. Was that before or after August 19, 1950?

A. It was before there was any trial; I mean anything to do with court proceedings.

Q. And those are the only two times you have ever talked to Doctor Cramer?

A. I don't recall any others.

Q. Now, did you discuss or he discuss his honesty?

A. I would say general integrity; yes.

Q. Well, did you use the words "honesty" and "integrity" when you were discussing that?

A. Yes. "Usefulness" was another word.

Q. You mean in that conversation you and Doctor Cramer mentioned that, his integrity? Did you use the word "integrity"?

A. Yes.

Q. Isn't it unusual for a man to, in a conversation, to mention his integrity?

A. Not when it is so apparent. [306]

Q. Is that right? A. That is right.

Q. Then did he mention the word "honesty"; that he was honest?

A. I believe that word was used exactly.

Q. Now, what was the occasion for saying that he was an honest man?

A. Due to his dealings; as I say, we were discussing mostly the Boy's Club and its influence upon the Boy Scouts and similar matters, and then the

(Testimony of John F. Van Gilder.)

discussion came up as to who was running it, why and how.

The Court: But before we go any farther with this, am I to understand that Doctor Cramer is the only one with whom you have discussed his reputation?

A. No, sir.

The Court: Well, who are the others?

A. I can mention Mr. McMillan at the First National Bank, Mr. Murcowski, Frank Hansen of Hansen's Clothing and, I believe, oh, yes, Mr. Zaruba that used to have the pool room.

Q. And in each one of those you discussed his honesty and integrity?

A. I wouldn't say that was all the subject. Usefulness was the main idea. Integrity came into it; yes.

Q. What was the occasion for talking with Mr. McMillan about his honesty and integrity? [307]

A. That was after the arrest had been made; I mean, the case had been started; and we were each regretting that such a thing would come up.

Q. Then that was after he was arrested for bribery; is that correct? A. That is right.

Q. And that is when the subject came up?

A. That is right.

Q. You never talked with him before that occasion, did you? A. Not regarding Joe; no.

Q. Now, what is the other man's name at the bank? A. Murcowski.

(Testimony of John F. Van Gilder.)

Q. Murcowski. When did you talk with him about it?

A. I would say about one week ago or ten days, not over ten days ago.

Q. About ten days ago?

A. Something like that.

Q. And then that was after August 15, 1950, wasn't it?

A. That is right.

Q. And who was the other gentleman you talked with about it?

A. Frank Hansen.

Q. What was the occasion for talking with him?

A. Again it was at the Veterans of Foreign Wars first. I would say that was over a year ago. It was in 1947, and Frank agreed to go down and help Joe with the Boys' Club, [308] and then from that led into a discussion of Joe and his personality.

Q. And you discussed his honesty and integrity there?

A. That is right.

Q. Did he express an opinion, that that was his opinion?

A. He volunteered the information that Joe was about the most useful citizen around that he could find.

Q. Is that right?

A. That is right.

Q. How long had Joe lived around here?

A. Since the Spring of 1947. I don't know what month he came here.

Q. Do you know whether or not he operates the 400 Club?

A. Yes, sir.

Q. He does? How long has he operated that?

A. I don't remember when it started.

(Testimony of John F. Van Gilder.)

Q. What is the reputation of that 400 Club?

Mr. Kay: I object. It is improper cross-examination. We are not trying the 400 Club.

The Court: But the defendant is connected with it. Objection overruled.

Q. What is the reputation of the 400 Club here in Ketchikan?

A. I have only been there once or twice so I don't know.

Q. I am asking what its reputation is.

A. Well, you are asking me a question that I can't truthfully [309] answer.

Q. Well, what have you heard about it?

A. That it was a good place to eat; that you get fine steaks.

Q. What else did you hear about it? Now, just tell the truth, Mr. Van Gilder. What else did you hear about the operation of the 400 Club?

A. Well, I am trying to recall a time when I heard anything about the operation.

Q. Well, I am asking you, what else did you hear about the reputation of the operation of the 400 Club by Joe Patterson? Now, answer that.

A. I can't answer it because I don't recall ever discussing it with anyone.

Q. Well, then, you don't know then that it is even a restaurant; is that right?

A. I have eaten there.

Q. But you have never discussed its reputation then? A. No.

Q. With anybody? Are you sure of that?

(Testimony of John F. Van Gilder.)

A. I am positive.

Q. You know that the defendant runs that club though, don't you? A. Oh, yes.

Q. Now, then, do you know that the 400 Club has a reputation of being a gambling house or gambling establishment, and [310] that it also has a reputation of being a bootlegging joint or where they sell liquor without a license?

Mr. Kay: I object to the question, the form of the question. The prosecuting attorney is testifying. He should ask, put the question, "Do you know whether or not." He is claiming that it does have such a reputation.

The Court: Yes. It assumes that it has that reputation.

Mr. Kay: I think he should rephrase the question, may it please the Court.

Q. Answer the question.

A. Will you please restate it.

Q. Do you know that the 400 Club has the reputation of selling illegal liquor, without a license, and also as being a gambling establishment?

A. I know that liquor was sold, and I know that there wasn't a license, but I don't recall hearing there was a gambling establishment.

Q. You also know that there has been gambling in that place, don't you? A. Not on my own.

Q. You have heard that, haven't you?

A. I have heard it.

Q. Did you know—let me see these. Now, then, did you know, Mr. Van Gilder, that the defendant

(Testimony of John F. Van Gilder.)

Joseph C. Patterson on [311] September 24, 1948, plead guilty and was convicted in the City Magistrate's Court at Ketchikan, Alaska, for operating a gambling game?

A. I read it in the papers; yes.

Q. You knew that then?

A. Oh; gambling? No. Liquor.

Q. Oh; liquor. I will ask you about that in a minute. Did you know that he was convicted for operating a gambling game on or about September 24, 1948?

A. No. The only one I recall was on a liquor charge.

Q. And then you do know that he was convicted then about September 24, 1948, for selling liquor without a license; is that right? A. I do.

Q. You knew that? A. Yes.

Q. Now, then, did you know that Joe Patterson was arrested, and he was convicted on seven counts for selling liquor without a license in the United States Commissioner's Court at Ketchikan, Alaska, about December 29, 1948?

A. Wasn't that the same case?

Q. No, sir; it wasn't. Did you know that?

A. Well, I must have, but I thought there was one case. I didn't think there was two.

Q. Did you hear or know that he was convicted on one count of [312] maintaining a public nuisance or a gambling establishment in the United States Commissioner's Court at Ketchikan, Alaska, about December 29, 1948?

(Testimony of John F. Van Gilder.)

A. I didn't know what the charge was. I thought it was for selling liquor.

Q. But you know he was convicted for selling liquor and for operating a gambling establishment?

A. I didn't know that gambling was in it. I thought it was liquor purely and simply.

The Court: Well, did you make it a point to ascertain what the reputation of the defendant was after he got into this trouble; was that it?

A. No, sir.

Q. Now, Mr. Van Gilder, did you know that Joseph Cullen Patterson, or the defendant, was arrested by the Police Department of San Diego, California, on or about October 16, 1935?

A. No, sir.

Q. You didn't hear that? A. No.

Q. Did you hear that he was arrested by the Police Department of San Diego, California, on or about October 15, 1937, for battery and disorderly conduct and was convicted? A. No.

Q. Did you hear that the defendant Joseph Patterson was [313] arrested by the San Diego Police Department on or about August 3, 1940, for disorderly conduct? A. No.

Q. Did you hear that on or about September 18, 1940, that Joseph Cullen Patterson was arrested by the San Diego Police Department for being drunk and that he forfeited bail on that occasion?

A. No.

Q. Did you hear that he was arrested as John

(Testimony of John F. Van Gilder.)

Johnson, that is that this defendant here was arrested as John Johnson, by the Police Department of San Diego, California, on or about December 7, 1941, for maintaining gambling? A. No.

Q. Did you hear that Joseph C. Patterson was arrested by the San Diego Police Department on or about February 13, 1942?

A. I knew nothing of his record below.

Q. Did you hear that Joseph C. Patterson was arrested—

Mr. Kay: The witness just said that he knew nothing about his record below.

Mr. Baskin: Well, I can ask the witness if he heard these things.

The Court: Well, of course, if he says he knows nothing about it, it is futile to ask him, I suppose.

Q. Did you hear that—

Mr. Kay: I object to any further question along this [314] line. He said that he knew nothing of his record below. I think he is foreclosed.

The Court: Well, unless it is for the purpose of predicating another question on it; I don't know whether he wants to embody all this in another question and attempt to sum up the witness' testimony in one fell swoop or not. If you don't, why there is no use of going into it.

Mr. Baskin: I am going to ask him another question following all of this, may it please the Court.

Mr. Kay: Much of these things are merely, does he know whether he has ever been arrested.

(Testimony of John F. Van Gilder.)

Mr. Baskin: I am asking if he had heard of it. That is all.

The Court: Well, of course, as far as reputation is concerned, he is not limited to conviction.

Mr. Kay: But this all relates to his reputation in San Diego, California, and has nothing whatever to do with his reputation in Ketchikan, Alaska, which is the question.

The Court: Well, it may be that in one sense it hasn't anything to do with it because it perhaps wouldn't tend to establish reputation down there, but nevertheless it is proper cross-examination.

Mr. Kay: It is too remote, your Honor, the further objection with regard to any reputation in Ketchikan, Alaska, at the present time. [315]

The Court: It is not too remote under the Mitchelson case and that seems to be the case that governs here. In other words, you can go back a considerable distance or in a considerable time to inquire whether the witness has heard something that would tend to weaken his testimony or his conclusion. He may be asked whether in view of that he still thinks the reputation is as he testified.

Q. I will ask you the question, did you know, did you hear that Joseph C. Patterson was arrested by the Police Department of San Diego, California, October 2, 1942, for vagrancy and that he forfeited the bail? A. No.

Q. Did you hear that Joseph C. Patterson was arrested by the Police Department at San Diego,

(Testimony of John F. Van Gilder.)

California, December 30, 1942, for maintaining gambling and that he forfeited a hundred dollars bail?

A. No.

Q. Did you hear that Joseph Cullen Patterson on or about February 27, 1943, was arrested by the Police Département of San Diego, California, on a fugitive warrant from Manhattan Beach, California?

A. No.

Q. Did you hear that Joseph Cullen Patterson was arrested August 25, 1943, by the Police Department at San Diego, California—— [316]

A. No.

Q. For soliciting gambling and that he was convicted in the Police Court?

A. I didn't know that.

Q. Did you hear that he was arrested by the San Diego Police Department of California, on or about September 18, 1943, for vagrancy?

A. No.

Q. Now, Mr. Van Gilder, after knowing that the defendant was convicted in the United States Commissioner's Court for maintaining a common nuisance, a gambling establishment, and also on seven counts of selling liquor without a license, and for, convicted in the Municipal Court at Ketchikan for selling liquor without a license and for also operating a gambling game, do you want to change your testimony?

A. Not a bit.

Q. You still believe——

A. I still believe in Joe Patterson. Period.

(Testimony of John F. Van Gilder.)

Q. That is your opinion; is it?

A. That is right.

Q. Now, do you still think that that is the reputation of Joe Patterson here in this community?

A. With anyone that knows Joe personally; yes.

Q. That is their opinion of his reputation; is it? [317]

A. It couldn't help be otherwise.

Q. With all of these convictions for gambling and selling liquor? You stand on that?

A. Yes, sir.

Mr. Baskin: No further examination.

Redirect Examination

By Mr. Kay:

Q. A number of these conversations which you mentioned on Mr. Baskin's cross-examination occurred after Joe's conviction in 1948 for selling liquor, did they not, Mr. Van Gilder?

A. Yes, they did.

Q. And they still expressed opinion of his honesty and integrity being the finest, did they not?

A. That is right.

Q. And——

Mr. Baskin: Your Honor, I object to that as being after the defendant's arrest.

Mr. Kay: After the conviction, I said, in 1948. I said that very clearly.

Mr. Baskin: I am sorry. I will withdraw the objection. I thought you meant something else.

Q. And Mr. Van Gilder, you heard reference to the 400 Club as a gambling club, of gambling occur-

(Testimony of John F. Van Gilder.)

ring there. Have you heard of gambling occurring in the Elks Club in the City [318] of Ketchikan?

Mr. Baskin: I object to that, your Honor. It is irrelevant.

The Court: Yes; unless you show the defendant is connected with the Elks Club in its operation some way. The objection is sustained.

Mr. Kay: Would the same objection be made if I asked him if gambling occurred at the Vets' Club in the City of Ketchikan?

Mr. Baskin: Yes. I object to any——

The Court: I should think so.

Mr. Kay: Well, then I won't bother. That is all, Mr. Van Gilder.

The Court: Well, now, Mr. Van Gilder, you have told us what a number of persons think of the defendant. What does the rest of Ketchikan think about him?

A. Well, your Honor, I wouldn't know that because I haven't discussed it with them and I just don't know.

The Court: That is all.

Recross-Examination

By Mr. Baskin:

Q. Just a moment. I want to ask you a question. Are you employed at the present time?

A. No, sir. [319]

Q. What was your former employment?

A. I was assistant steward at the Veterans of Foreign Wars Club.

(Testimony of John F. Van Gilder.)

Q. You were assistant steward? Is that a bartender? Is that what you mean?

A. Part of my duties were that; yes.

Q. And at the Veterans Club? A. Yes, sir.

Mr. Baskin: No further examination.

Mr. Kay: That is all, Mr. Van Gilder.

(Witness excused.)

Mr. Kay: Defense rests.

The Court: Does the prosecution have any rebuttal?

Mr. Baskin: Well, at present, your Honor, I don't. I don't think so. I do have a motion though, however, to make in the absence of the jury.

Mr. Kay: And I also have a motion.

The Court: Did you say you don't think you have any rebuttal?

Mr. Baskin: No, I don't believe I do.

The Court: Well, the jury may be excused until tomorrow morning at ten o'clock. You may retire now. The Court will remain in session however.

(Whereupon the jury retired from the courtroom.)

Mr. Baskin: May it please the Court, at this time I [320] would like to move that the Court have stricken from the record in this case, and the jury appropriately instructed, all of the evidence relating to alleged entrapment of the defendant in this case on the grounds that their defense of entrapment was not established by the evidence.

(Whereupon argument on the motion was presented by respective counsel, and the defendant was given until 9:30 o'clock a.m., October 25, 1950, to present citations in support of his contentions.)

(Thereupon Court was adjourned until 9:30 o'clock a.m., October 25, 1950, reconvening as per adjournment, with all parties present as heretofore, and in the absence of the jury; whereupon the trial proceeded as follows.)

Mr. Kay: May it please the Court, at this time in order that we can dispose of all of these motions together, I would like to move for a judgment of acquittal.

The Court: The same grounds?

Mr. Kay: The same grounds will be raised.

The Court: Well, the motion is denied. You may submit such authorities as you have (referring to the motion of the Government heretofore made).

(Whereupon further argument on the motion of the Government was presented by respective counsel, and Court then recessed for ten minutes, reconvening as per recess with all parties present as heretofore, and the jury all present in the [321] box; whereupon the Court denied the motion of the Government, and the trial proceeded as follows:)

The Court: Is there any rebuttal?

Mr. Baskin: No, we haven't any, your Honor.

The Court: Both sides rest then?

Mr. Baskin: Yes, sir.

Mr. Kay: Yes, sir.

The Court: You may proceed with the argument then.

(Whereupon, Stanley D. Baskin, Assistant United States Attorney, made the opening argument to the jury in behalf of the Government; and thereafter, Wendell Kay, of attorneys for the defendant, commenced the argument to the jury in behalf of the defendant.)

(Thereupon, the jury was duly admonished and Court recessed until 2:00 o'clock p.m., October 25, 1950, reconvening as per recess, with all parties present as heretofore, and the jury all present in the box; whereupon, Wendell Kay, of attorneys for the defendant, concluded the argument to the jury in behalf of the plaintiff; and thereafter, Ernest E. Bailey, Assistant United States Attorney, made the closing argument to the jury in behalf of the Government.)

(Whereupon, Court recessed for five minutes, reconvening as per recess, with all parties present and the jury all present in the box: and)

(Thereupon, respective counsel were furnished copies [322] of the Court's Instructions to the Jury, and the Court read his Instructions to the Jury.)

The Court: Any exceptions?

(Whereupon, respective counsel and the court reporter approached the bench, out of hearing of the jury, and the following occurred:)

Mr. Kay: I except to the failure to give the three instructions requested by the defendant; and except to Instruction 7, line 22, except to the words "encourage or cooperate with him in his commission of it"; line 29 "overcome the will power and judgment of the other"; on Page 8 except to the words "for personal gain or because Lamb was about to withdraw and make the offer to another," line 3; and line 22, "and urged him to commit them or encouraged or cooperated with him in its commission." I have no other exceptions.

Mr. Baskin: No exceptions.

(Whereupon, respective counsel and the court reporter withdrew from the bench and were again within hearing of the jury; the bailiffs were duly sworn to take charge of the jury, and the jury retired to the jury room at 3:25 o'clock p.m. in charge of the bailiffs to deliberate upon a verdict; whereupon Court adjourned until 10:00 o'clock a.m., October 26, 1950, subject to the call of the jury, and having reconvened as per adjournment, with all parties present as heretofore, and the jury all present in the jury box with the exception of William [323] T. Burns, who, having become ill, was excused by stipulation of respective counsel; whereupon the following proceedings were had):

The Court: Ladies and gentlemen of the jury, through your Foreman you have asked me the following questions: "Having been deadlocked for

eleven hours, we wish further instructions. (1) How much emphasis should we place on lines 27 and 28, page 8. (2) Some jurors feel the whole case rests on the final paragraph, page 8. Others feel the case is clear and does not hinge on that paragraph of your instructions but rather on lines 5 and 6, page 7." I instruct you further as follows:

(Whereupon, respective counsel were furnished copies of the Court's Supplemental Instructions to the Jury, and the Court read his Supplemental Instructions to the Jury.)

The Court: Any exceptions?

Mr. Kay: Yes, your Honor.

(Whereupon, respective counsel and the court reporter approached the bench, out of hearing of the jury, and the following occurred):

Mr. Kay: I again except very definitely to lines 19 and 20, "the defendant voluntarily chose to accept the proposal for personal gain." (Reference made to citations.) I also except to the entire instructions and particularly to the complete paragraph on Page 2, the last page, Page 3, on [324] the ground that entirely too much emphasis is placed on personal gain. (Reference made to citations.)

The Court: I don't see it that way.

Mr. Kay: I respectfully except to the entire instruction.

(Whereupon, respective counsel and the court reporter withdrew from the bench and were again within hearing of the jury.)

The Court: The jury may now retire for further deliberation.

(Whereupon, the jury retired to the jury room at 10:35 o'clock a.m. in charge of the bailiffs to deliberate upon a verdict; and thereafter Court reconvened at the call of the jury at 3:00 o'clock p.m., October 26, 1950, with all parties present as heretofore, and the eleven jurors all present in the jury box; whereupon the following proceedings were had):

The Court: Ladies and gentlemen of the jury, you have informed me through your foreman that you are hopelessly deadlocked. Now, I don't want to know how you stand in your balloting. It is improper for anyone to state how the balloting stands. But I do want to know whether you have made any progress or whether the balloting has been unchanged for a considerable length of time.

Foreman: Well, it has been the same since [325] ten o'clock last night, your Honor.

The Court: No change in the balloting?

Foreman: No change at all.

The Court: Well, I am going to give you another instruction on entrapment which is the only one that you need to pay attention to so far as the special instruction is concerned, and see if that might not help you.

(Whereupon, respective counsel were furnished copies of the Court's Second Supplemental Instructions to the Jury, and the Court

read his Second Supplemental Instructions to the Jury.)

The Court: In other words, so far as the law of entrapment is concerned, you need consider no other instruction except the one just given to you now. Are there any exceptions?

Mr. Kay: There certainly are, your Honor.

(Whereupon, respective counsel and the court reporter approached the bench, out of hearing of the jury, and the following occurred):

Mr. Kay: First, I wish to except because it does not call to the jury's attention properly the question of reasonable doubt as to any element of the entrapment. In other words, if there is a reasonable doubt as to the facts, they are entitled to bring in a verdict of not guilty. I except to the entire instruction. It doesn't state accurately [326] the law of entrapment; second paragraph, second page, lines 12 through 21, as being inaccurate statement of the law of entrapment, emphasis on personal gain; and in that connection I cite *Morei vs. U.S.*, 127 F. 2d, and I do not have the page number; and I object also to the entire paragraph beginning on Page 2, line 31 through line 15, on Page 3, as being an inaccurate statement of the law of entrapment; and I object particularly to lines 4 through 14 on Page 3, stating an illustration which is not in line with the law of entrapment as set forth in the *Morei* case previously

cited and the other decisions of the Circuit Court in the case of *Wo Wai vs. U.S.*, Ninth Circuit Court of Appeals.

(Whereupon, respective counsel and the court reporter withdrew from the bench and were again within hearing of the jury.)

The Court: You may retire to further deliberate.

(Whereupon, the jury retired to the jury room at 3:12 o'clock p.m., in charge of the bailiffs to deliberate upon a verdict; and thereafter Court reconvened at the call of the jury at 4:10 o'clock p.m., October 26, 1950, with all parties present as heretofore, and the eleven jurors all present in the jury box; whereupon the following proceedings were had):

The Court: Ladies and gentlemen, have you reached a verdict?

Foreman: We have, your Honor. [327]

The Court: You may hand it to the Clerk. You may read and file the verdict.

(Whereupon, the verdicts were read by the Clerk, finding defendant guilty as charged in both counts of the indictment; whereupon, the jury was excused and retired from the courtroom.)

Mr. Kay: May it please the Court, at this time I would like to move for a judgment of acquittal notwithstanding the verdict on several grounds; first, on the ground that the instructions of the

Court on the question of entrapment do not accurately state the law on that defense; and second, that the jury, having developed more or less of a deadlock since ten o'clock last night, were in fact coerced into arriving at a judgment of guilty by the second instruction of the Court on the subject of entrapment to which I have already objected.

The Court: I think you should call that the third instruction.

Mr. Kay: Third; I am sorry, and it is the second supplementary?

The Court: Yes.

Mr. Kay: That is all that I care to say on that subject.

The Court: Well, I realize the difficulty, of course, of framing any instructions on entrapment to meet the peculiar facts in this case, and the reason for the difficulty is that I think we are all on the wrong theory. I don't think that [328] the defense of entrapment applies to the acts, to the criminal act, or a corrupt public officer. I don't think the United States is chargeable and, if you didn't rely solely on entrapment as a defense, I never would have submitted it to the jury in the first place.

Mr. Kay: May I further request, your Honor, that a stay of execution be granted for a period of five days in which the defendant can have an opportunity to arrange his affairs, and bond be continued in the same amount?

Mr. Baskin: Your Honor, we have two motions before you pass on that. One is that the Court set

next Monday, October 30th, as time for sentence, and at this time I also move that the defendant be remanded to the custody of the Marshal.

(Whereupon, argument on the matter of bond was presented by respective counsel.)

The Court: Well, I am inclined to allow the defendant to go at the present bail, at least until after sentence. Then after sentence, why if you feel that the security is insufficient to assure his attendance, you might bring it to the attention of the Court again. But at the present time I think, unless you have some reason you haven't disclosed, it would seem to me to be sufficient.

Mr. Baskin: We will abide by the judgment of the Court, your Honor, but you haven't fixed the time for sentence. [329]

The Court: I was just going to remark that fixing of time for sentence would, of course, not have any effect on your motion for stay of execution, so time will be fixed for ten o'clock Monday morning.

(Thereafter, on the 30th day of October, 1950, at 10:00 o'clock a.m., with all parties present as heretofore, with the exception of Wendell Kay, the Court denied the motions made heretofore by counsel for defendant upon the filing of the verdicts; whereupon, sentence was imposed on the defendant, and upon motion by counsel for the defendant that the defendant be admitted to bail pending appeal, the Court admitted the defendant to bail in the amount of \$7,500.00 and committed him to the

custody of the Marshal until such time as he would furnish bail.

(Thereafter, on the 3rd day of November, 1950, at 10:00 o'clock a.m., defendant's motion for a new trial being called up for hearing, the Court ordered that the supplemental motion and supporting affidavits be stricken from the files; whereupon, argument was presented by Robert H. Ziegler in behalf of the motion, and the Court denied the motion).

(End of Record.) [330]

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove-entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, viz., United States of America vs. Joseph C. Patterson, No. 1549-KB of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages numbered 1 to 330, both inclusive, contain a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled cause, to the best of my ability.

Witness, my signature this 13th day of January, 1951.

/s/ MILDRED K. MAYNARD,
Official Court Reporter.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, J. W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the foregoing and hereto attached 54 pages of typewritten matter, numbered from 1 to 54, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe and supplemental praecipe of the Appellant on file herein and made a part hereof, in Cause No. 1549-KB, wherein Joseph C. Patterson is Defendant-Appellant and the United States of America is Plaintiff-Appellee, as the same appears of record and on file in my office; that said record is by virtue of a Notice of Appeal in this cause and the return thereof in accordance therewith.

And I further certify that this transcript was prepared by me in my office and that the cost of preparation, examination and certification amounting to \$26.60 has been paid to me by counsel for Appellant.

In Witness Whereof, I have hereunto set my hand and the seal of the above-entitled court this 17th day of January, 1951.

[Seal]

J. W. LEIVERS,

Clerk of the District Court.

By /s/ A. V. SIMONSEN,

Deputy.

[Endorsed]: No. 12812. United States Court of Appeals for the Ninth Circuit. Joseph C. Patterson, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Division No. One.

Filed January 19, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.